

Nos. 21-1086, 21-1087

In The
Supreme Court of the United States

—◆—
JOHN H. MERRILL, ET AL.,
Appellants,

v.

EVAN MILLIGAN, ET AL.,
Appellees.

—◆—
JOHN H. MERRILL, ET AL.,
Petitioners,

v.

MARCUS CASTER, ET AL.,
Respondents.

—◆—
**On Appeal From And Writ Of Certiorari
To The United States District Court
For The Northern District Of Alabama**

—◆—
JOINT APPENDIX VOLUME ONE

—◆—
DEUEL ROSS
Counsel of Record
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
700 14th Street N.W., Ste. 600
Washington, DC 20005
(202) 682-1300
dross@naacpldf.org
Counsel for Evan Milligan, et al.

ABHA KHANNA
Counsel of Record
ELIAS LAW GROUP LLP
1700 Seventh Ave., Ste. 2100
Seattle, WA 98101
(206) 656-0177
AKhanna@elias.law
Counsel for Marcus Caster, et al.

STEVE MARSHALL
Alabama Attorney General
EDMUND G. LACOUR JR.
Counsel of Record
OFFICE OF THE ATT'Y GEN.
501 Washington Ave.
Montgomery, AL 36130
(334) 242-7300
Edmund.LaCour@AlabamaAG.gov
Counsel for Secretary Merrill

DORMAN WALKER
BALCH & BINGHAM LLP
105 Tallapoosa St., Ste. 200
P.O. Box 78 (36101)
Montgomery, AL 36104
(334) 269-3138
dwalker@balch.com
*Counsel for Sen. McClendon
and Rep. Pringle*

**Notice of Appeal and Petition for Writ of Certiorari
filed January 28, 2022
Probable Jurisdiction Noted and Certiorari Granted
February 7, 2022**

TABLE OF CONTENTS¹

	Page
Relevant Docket Entries in <i>Milligan v. Merrill</i> , No. 2:21-cv-1530 (N.D. Ala.)	JA1
Relevant Docket Entries in <i>Caster v. Merrill</i> , No. 2:21-cv-1536 (N.D. Ala.).....	JA37
Relevant Pleadings in <i>Milligan v. Merrill</i> , No. 2:21-cv-1530 (N.D. Ala.)	
Complaint (ECF 1) (November 16, 2021).....	JA70
Joint Stipulated Facts for Preliminary In- junction Proceedings (ECF 53) (December 7, 2021).....	JA144
Preliminary Expert Report of Baodong Liu, Ph.D. (ECF 68-1) (December 14, 2021)	SJA1
Declaration of Joseph Bagley, Ph.D. (ECF 68- 2) (December 14, 2021).....	JA185
Declaration of Moon Duchin, Ph.D. (ECF 68- 5) (December 14, 2021).....	SJA21
Deposition of Randy Hinaman – Excerpts (ECF 70-2) (December 15, 2021).....	JA269
Declaration of Bernard Simelton (ECF 70-4) (December 15, 2021)	JA282

¹ “JA” refers to the Joint Appendix. “SJA” refers to the Supplemental Joint Appendix – a separate volume, printed on 8.5” x 11” paper, comprising documents that contain maps and charts that are easier to read in their original format. “MSA” and “CSA” refer to the Milligan Stay Appendix and Caster Stay Appendix, respectively, with pages corresponding to the booklet-format versions of those appendices.

TABLE OF CONTENTS – Continued

	Page
Declaration of Shalela Dowdy (ECF 70-5) (December 15, 2021)	JA287
Declaration of Evan Milligan (ECF 70-6) (December 15, 2021)	JA291
Rebuttal Report of Baodong Liu, Ph.D. (ECF 76-1) (December 21, 2021).....	SJA37
Supplemental Declaration of Joseph Bagley, Ph.D. (ECF 76-2) (December 21, 2021)	JA299
Rebuttal Report of Moon Duchin, Ph.D. (ECF 76-4) (December 21, 2021).....	JA307
Declaration of Thomas Bryan – Excerpts (ECF 82-2) (December 27, 2021)	SJA41
Expert Report of Kosuke Imai, Ph.D. (ECF 88- 1) (December 27, 2021).....	SJA52
Rebuttal Expert Report of Kosuke Imai, Ph.D. (ECF 88-6) (December 27, 2021)	SJA68
Supplemental Report of Moon Duchin, Ph.D. (ECF 92-1) (December 27, 2021)	SJA74
Relevant Pleadings in <i>Caster v. Merrill</i> , No. 2:21-cv-1536 (N.D. Ala.)	
Complaint (ECF 3) (November 4, 2021).....	JA312
Joint Stipulated Facts for Preliminary Injunction Proceedings – Excerpts (ECF 44) (December 7, 2021)	JA344
Declaration of William S. Cooper (ECF 48) (December 14, 2021)	SJA77

TABLE OF CONTENTS – Continued

	Page
Declaration of Maxwell Palmer, Ph.D. (ECF 49) (December 14, 2021).....	SJA116
Declaration of Dr. Bridgett King (ECF 50) (December 14, 2021)	JA354
Transcript of Bench Trial, <i>Chestnut v. Merrill</i> , No. 2:18-cv-907 (N.D. Ala. Nov. 5, 2019) – Day 2 – Excerpts (ECF 56-4) (December 15, 2021).....	JA427
Transcript of Bench Trial, <i>Chestnut v. Merrill</i> , No. 2:18-cv-907 (N.D. Ala. Nov. 6, 2019) – Day 3 – Excerpts (ECF 56-5) (December 15, 2021).....	JA462
Transcript of Bench Trial, <i>Chestnut v. Merrill</i> , No. 2:18-cv-907 (N.D. Ala. Nov. 4, 2019) – Day 1 – Excerpts (ECF 56-7) (December 15, 2021).....	JA473
Second Declaration of Dr. Bridgett King (ECF 64) (December 21, 2021).....	SJA135
Second Declaration of William Cooper (ECF 65) (December 21, 2021).....	SJA147
Supplemental Report of Thomas Bryan – Excerpts (ECF 76-4) (December 23, 2021)	SJA160
Deposition of James McClendon – Excerpts (ECF 84-3) (December 27, 2021)	JA487
Deposition of Chris Pringle – Excerpts (ECF 84-4) (December 27, 2021).....	JA490

TABLE OF CONTENTS – Continued

	Page
Evidentiary Submission – Excerpts – <i>Singleton v. Merrill</i> , No. 2:21-cv-1291 (N.D. Ala.) (ECF 57-7) (December 15, 2021).....	SJA204
Preliminary Injunction Hearing Transcript – Excerpts (ECF 105-105-6) (January 4-12, 2022)	
Testimony of Dr. Natalie Davis (Excerpts).....	JA496
Testimony of Evan Milligan (Excerpts).....	JA503
Testimony of Dr. Kosuke Imai (Excerpts)	JA538
Testimony of William S. Cooper (Excerpts).....	JA586
Testimony of Dr. Moon Duchin (Excerpts)	JA620
Testimony of Thomas Bryan (Excerpts).....	JA721
Testimony of Dr. Joseph Bagley (Excerpts).....	JA752
Testimony of Dr. Baodong Liu (Excerpts)	JA758
Testimony of Benjamin Jones (Excerpts).....	JA768
Testimony of Dr. M.V. Trey Hood III (Excerpts).....	JA777
Testimony of Dr. Bridgett King (Excerpts)	JA785
Testimony of Marcus E. Caster (Excerpts)	JA788
Testimony of Bradley Byrne (Excerpts)	JA802

TABLE OF CONTENTS – Continued

Page

The following opinions and orders have been omitted in printing this joint appendix because they appear on the following page in the appendix to the Jurisdictional Statement and Petition for Certiorari:

District Court Memorandum Opinion and Order Granting Preliminary Injunction, <i>Milligan v. Merrill</i> , No. 2:21-cv-1530 (N.D. Ala. Jan. 24, 2022)	MSA-1
District Court Order Denying Motion for Stay, <i>Milligan v. Merrill</i> , No. 2:21-cv-1530 (N.D. Ala. Jan. 27, 2022)	MSA-250
District Court Memorandum Opinion and Order Granting Preliminary Injunction, <i>Caster v. Merrill</i> , No. 2:21-cv-1536 (N.D. Ala. Jan. 24, 2022)	CSA-1
District Court Order Denying Motion for Stay, <i>Caster v. Merrill</i> , No. 2:21-cv-1536 (N.D. Ala. Jan. 27, 2022)	CSA-254

JA1

**U.S. District Court
Northern District of Alabama (Southern)
CIVIL DOCKET FOR CASE #: 2:21-cv-01530-AMM**

Milligan et al v. Merrill et al
Assigned to: Judge Anna M Manasco
Cause: 28:1983 Civil Rights

Date Filed	#	Docket Text
11/16/2021	1	COMPLAINT against All Defendants filed by Alabama State Conference of the NAACP, Greater Birmingham Ministries, Letetia Jackson, Adia Winfrey, Evan Milligan, Khadidah Stone, Shalela Dowdy.(DNW) (Entered: 11/16/2021)
11/16/2021	2	ORDER – The parties are ORDERED to simultaneously file briefs on or before 12:00 PM, CENTRAL STANDARD TIME, ON THURSDAY, NOVEMBER 18, 2021, that explain and support their positions on (1) the question whether a three judge panel appointed under 28 U.S.C. § 2284 has jurisdiction to hear both the Voting Rights Act claims and the constitutional claims asserted in this action, see Doc. 1, and (2) the question whether this matter should be consolidated with Singleton v. Merrill, Case No. 21-cv-1291-AMM, in whole or in part. Counsel for plaintiffs are ORDERED to immediately inform counsel for the defendants

JA2

- of this order. Signed by Judge Anna M Manasco on 11/16/2021. (KEK) (Entered: 11/16/2021)
- 11/18/2021 16 Brief re 2 Order,, *Plaintiffs' Positions on Jurisdiction and Consolidation*. (Jackson, Sidney) (Entered: 11/18/2021)
- 11/18/2021 17 Brief re 2 Order,, filed by John Merrill. (Attachments: # 1 Exhibit A)(LaCour, Edmund) (Entered: 11/18/2021)
- 11/18/2021 18 Brief re 2 Order,, *Plaintiffs' Positions on Jurisdiction and Consolidation (Replacement Brief)*. (Jackson, Sidney) (Entered: 11/18/2021)
- 11/18/2021 19 NOTICE by John Merrill *Notice of Filing* (Attachments: # 1 Exhibit Motion for Status Conference)(Davis, James) (Entered: 11/18/2021)
- 11/18/2021 22 ORDER. The clerk shall transmit this order and a copy of the complaint to the Chief Judge of the United States Court of Appeals for the Eleventh Circuit, regarding empaneling a Three-Judge Panel. Signed by Judge Anna M Manasco on 11/18/2021. ** a copy of this order and the complaint have been emailed to Chief Judge Pryor, this date. (FNC) (Entered: 11/18/2021)
- 11/18/2021 23 **ORDER DESIGNATION OF THREE-JUDGE COURT: I** hereby designate District Judge Terry F. Moorer and Circuit Judge

JA3

Stanley Marcus to serve with the requesting judge, Judge Manasco, as members of the three judge court to hear and decide the action. Signed by Judge William H. Pryor Jr. on 11/18/2021. (DNW,) (Entered: 11/18/2021)

11/18/2021 31 ORDER Rule 16 Conference set for 11/23/2021 10:00 AM CST. Signed by Judge Anna M Manasco on 11-18-2021. (TGC) (Entered: 11/18/2021)

11/23/2021 40 **ORDER ON MOTIONS FOR CONSOLIDATION AND JOIN-
DER, AND SCHEDULING OR-
DER**, Before MARCUS, Circuit Judge, MANASCO and MOORER, District Judges, The motion to consolidate is **GRANTED** insofar as Singleton and Milligan are consolidated for the limited purposes of preliminary injunction discovery and a preliminary injunction hearing; the court **RESERVES RUL-
ING** on the motion for further consolidation of Singleton and Milligan; the motion for consolidation to include Caster is **DENIED** at this time; the motion to join or dismiss is **DENIED** at this time; and a scheduling order is **SET**. On or before **DECEMBER 7, 2021**, the parties in Singleton and Milligan shall file a joint statement of facts that are stipulated for purposes of

JA4

preliminary injunction proceedings. The Milligan plaintiffs shall file their motion for preliminary injunctive relief on or before **DECEMBER 15, 2021**. The Singleton plaintiffs may (but are not required to) amend, supplement, replace, or otherwise restate their application for preliminary injunctive relief on or before **DECEMBER 15, 2021**. The Secretary shall file any objections to both the Singleton plaintiffs motion and the Milligan plaintiffs motion on or before **DECEMBER 22, 2021**. The previous order of the court that the Secretary shall file any objection to the Singleton plaintiffs motion by November 26, 2021 is **VACATED** solely as to the deadline for that response. On or before **DECEMBER 10, 2021**, the parties in Singleton and Milligan shall exchange any expert reports related to the motion for preliminary injunction. On or before **DECEMBER 20, 2021**, the parties in Singleton and Milligan shall exchange any expert rebuttal reports related to the motion for preliminary injunction. On or before **DECEMBER 17, 2021**, the parties in Singleton and Milligan shall complete all discovery related to the motion for preliminary injunction, other than the filing of the

expert rebuttal reports. Any other motions related to the application for preliminary injunctive relief or hearing thereof shall be filed on or before close of business on **DECEMBER 17, 2021. At or before 4:00 pm Central Standard Time on DECEMBER 23, 2021**, the parties in Singleton and Milligan shall file a joint pretrial report as directed. The court **SETS** a hearing on both applications for preliminary injunctive relief on **JANUARY 4, 2022, at 9:00 a.m. Central Standard Time** in Courtroom 8 in Hugo L Black US Courthouse, Birmingham, AL. Within five days of the completion of the preliminary injunction hearing, the parties in Singleton and Milligan shall file proposed findings of fact and conclusions of law for the panels consideration. Signed by Judge Anna M Manasco on 11/23/2021.(KAM) (Entered: 11/23/2021)

- 12/07/2021 51 ANSWER to 1 Complaint by Jim McClendon, Chris Pringle.(Walker, J) (Entered: 12/07/2021)
- 12/07/2021 52 ANSWER to 1 Complaint by John Merrill.(Davis, James) (Entered: 12/07/2021)
- 12/07/2021 53 *STIPULATION OF AGREED FACTS FOR PRELIMINARY INJUNCTION PROCEEDINGS* by

JA6

Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries, Letetia Jackson, Evan Milligan, Khadidah Stone. filed by Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries, Letetia Jackson, Evan Milligan, Khadidah Stone (Ross, Deuel) (Entered: 12/07/2021)

- 12/08/2021 54 **TEXT ORDER:** Under Federal Rule of Civil Procedure 26, a motion for a protective order must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. Fed. R. Civ. P. 26(c)(1). The pending motion for a protective order, Doc. 48, does not contain such certification. Defendants McClendon and Pringle are ORDERED to file at or before 4:00 PM CENTRAL STANDARD TIME December 8, 2021, a supplement to the motion for a protective order that contains the requisite certification. Signed by Judge Anna M Manasco on 12/8/2021. (DNW) (Entered: 12/08/2021)
- 12/08/2021 55 Amended MOTION for Protective Order by Jim McClendon, Chris Pringle. (Attachments: # 1 Exhibit A, B, & C)(Walker, J) (Entered: 12/08/2021)

JA7

- 12/10/2021 56 RESPONSE in Opposition re 46 MOTION for Protective Order filed by Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries, Letetia Jackson, Evan Milligan, Khadidah Stone, Adia Winfrey. (Ross, Deuel) (Entered: 12/10/2021)
- 12/10/2021 57 **TEXT ORDER:** The court has reviewed the plaintiffs' response to the motion of Defendants McClendon and Pringle for a protective order. Doc. 56 . Any reply is due at or before 5:00 PM CENTRAL STANDARD TIME **Sunday, December 12, 2021.**Signed by Judge Anna M Manasco on 12/10/2021. (DNW,) (Entered: 12/10/2021)
- 12/12/2021 58 RESPONSE in Opposition re 55 Amended MOTION for Protective Order *Defendants McClendon and Pringles Reply to Plaintiffs' Opposition to their Motion for a Protective Order* filed by Jim McClendon, Chris Pringle. (Walker, J) (Entered: 12/12/2021)
- 12/13/2021 59 **ORDER ON MOTION FOR PROTECTIVE ORDER:** Motion for Protective Order Doc. 55 is **DE-NIED** because the Legislators have waived any such immunity and privilege.If the Legislators wish to assert other objections to the plaintiffs discovery requests, they are

JA8

ORDERED to file those objections at or before **9:00 AM CENTRAL STANDARD TIME ON TUESDAY, DECEMBER 14, 2021**. Signed by Judge Anna M Manasco on 12/13/2021. (DNW,) (Entered: 12/13/2021)

12/13/2021 60 **TEXT ORDER:** The parties were ordered to exchange any expert reports related to the motion for preliminary injunction on or before December 10, 2021, and to exchange any rebuttal reports related to that motion on or before **December 20, 2021**, Doc. 45 in Singleton, Case No. 2:21-cv-01291-AMM, and Doc. 40 in Milligan, Case No. 2:21-cv01530-AMM. In light of the preliminary injunction hearing set on **January 4, 2022**, the parties are **ORDERED** to file on or before **DECEMBER 14, 2021**, any expert reports exchanged, and to file on or before **DECEMBER 21, 2021**, any rebuttal reports exchanged. Signed by Judge Anna M Manasco on 12/13/2021. Signed by Judge Anna M Manasco on 12/13/2021. (DNW,)Edit docket text. Modified on 12/13/2021 (DNW,). (Entered: 12/13/2021)

12/14/2021 64 **ORDER ON DISCOVERY DISPUTES:** Counsel are therefore **DIRECTED** to confer forthwith and make every attempt to resolve the Legislators objections. If counsel are unable to resolve all such

JA9

objections, then the Legislators are **ORDERED** to file as soon as practicable, but not later than **12:00 PM CENTRAL STANDARD TIME on THURSDAY, DECEMBER 16, 2021**, any remaining objections that require the court's attention, as well as any motions and/or briefing that require the courts attention in connection with such objections. The Plaintiffs are **ORDERED** to file any motions and/or briefing that require the court's attention in connection with unresolved discovery objections as soon as practicable, but not later than **12:00 PM CENTRAL STANDARD TIME on THURSDAY, DECEMBER 16, 2021**. Signed by Judge Anna M Manasco on 12/14/2021. (DNW,) (Entered: 12/14/2021)

- 12/14/2021 65 Unopposed MOTION for Protective Order by John Merrill. (Attachments: # 1 Exhibit A -Proposed Protective Order)(Davis, James) (Entered: 12/14/2021)
- 12/14/2021 66 NOTICE by John Merrill re 60 Order,, (Attachments: # 1 Exhibit 1 Bryan report -Singleton, # 2 Exhibit 2 Bryan report – Milligan & Caster, # 3 Exhibit 3 Bryan cv, # 4 Exhibit 4 Hood report)(Davis, James) (Entered: 12/14/2021)

JA10

- 12/14/2021 67 PROTECTIVE ORDER. Signed by Judge Anna M Manasco on 12/14/2021. (FNC) (Entered: 12/14/2021)
- 12/14/2021 68 NOTICE by Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries, Letetia Jackson, Evan Milligan, Khadidah Stone re 60 Order,, (Attachments: # 1 Exhibit 1 – Liu Report, # 2 Exhibit 2 – Bagley Declaration, # 3 Exhibit 3 – Williamson Report, # 4 Exhibit 4 – Imai Report, # 5 Exhibit 5 – Duchin Declaration) (Ross, Deuel) (Entered: 12/14/2021)
- 12/15/2021 69 MOTION for Preliminary Injunction by Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries, Letetia Jackson, Evan Milligan, Khadidah Stone. (Ross, Deuel) (Entered: 12/15/2021)
- 12/15/2021 70 Evidentiary Material . (Attachments: # 1 Exhibit 6 2021 Redistricting Plans Comparative, # 2 Exhibit 7 Hinaman Deposition, # 3 Exhibit 8 Douglas Declaration, # 4 Exhibit 9 Simelton Declaration, # 5 Exhibit 10 Dowdy Declaration, # 6 Exhibit 11 Milligan Declaration, # 7 Exhibit 12 Jackson Declaration, # 8 Exhibit 13 Oct 26 2021 Hearing Transcript, # 9 Exhibit 14

JA11

Hall Declaration)(Ross, Deuel)
(Entered: 12/15/2021)

- 12/16/2021 71 **ORDER ON MOTION FOR PROTECTIVE ORDER:**The court DENIED their motion in a short order on December 13, 2021. Milligan Doc. 59 . Defendants McClendon and Pringle”s Second Amended Motion for a Protective Order, Doc. 55, is **DENIED**. Signed by Judge Anna M Manasco on 12/16/2021. (DNW) (Entered: 12/16/2021)
- 12/16/2021 72 **ORDER:** The parties are **ORDERED** to do the following: Send two hard copies of all exhibits and demonstratives that the parties intend to use during the preliminary injunction hearing to each member of this three judge court at the addresses listed below as soon as practicable after the exhibits are filed as part of the parties joint pre-trial report due on or before December 23, 2021, but in any event for a confirmed delivery on or before **DECEMBER 28, 2021**. File with the court not later than **DECEMBER 27, 2021** a list of all counsel who will attend and participate in the preliminary injunction hearing so that the court may arrange appropriate seating in the courtroom. Alert the court not later than **DECEMBER 27, 2021**, by an e-mail to Judge Manasco’s chambers

JA12

- (Manasco_Chambers@alnd.uscourts.gov), with a copy to all counsel, if counsel intends to use any audio-visual equipment during the preliminary injunction hearing other than the courtroom document camera. Signed by Judge Anna M Manasco on 12/16/2021. (DNW,) (Entered: 12/16/2021)
- 12/20/2021 Minute Entry for proceedings held before Circuit Judge Marcus and District Judges Manasco and Moorer: Status Conference held on 12/20/2021. (Court Reporter Teresa Roberson.) (FNC) (Entered: 12/20/2021)
- 12/21/2021 74 NOTICE by John Merrill (*Secretary of State's Notice of Filing Supplemental Expert Reports*) (Attachments: # 1 Exhibit A – Thomas Bryan – Supplemental Report Final, # 2 Exhibit B – MV Hood III – AL Supplemental Expert Report)(Davis, James) (Entered: 12/21/2021)
- 12/21/2021 75 **TEXT ORDER:** During the conference held on December 20, 2021, the parties in Singleton, Case No. 2:21-cv-1291-AMM, Milligan, Case No. 2:21-cv-1530-AMM, and Caster, Case No. 2:21-cv-1536-AMM, agreed to coordinate in drafting a joint proposed order of proceedings for the preliminary injunction hearing set for January 4, 2021. Accordingly, the parties

JA13

are **ORDERED** to file in each case on or before **5:00 PM CENTRAL STANDARD TIME ON DECEMBER 23, 2021**, such joint proposed order of proceedings. Signed by Judge Anna M Manasco on 12/21/2021. (DNW) (Entered: 12/21/2021)

- 12/21/2021 76 NOTICE by Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries, Letetia Jackson, Evan Milligan, Khadidah Stone re 60 Order,, *Plaintiffs' Notice of Filing Rebuttal Expert Reports* (Attachments: # 1 Exhibit 15 – Liu Rebuttal Report, # 2 Exhibit 16 – Bagley Supplemental Declaration, # 3 Exhibit 17 – Imai Rebuttal Report, # 4 Exhibit 18 – Duchin Rebuttal Report)(Ross, Deuel) (Entered: 12/21/2021)
- 12/22/2021 77 **ORDER:** The panel has decided to conduct the consolidated preliminary injunction hearing that will begin on January 4, 2022, remotely via Zoom. The Zoom information will be provided to all parties at a later date. The parties are **ORDERED** to send Judge Moorer's two hard copies of exhibits and demonstratives directly to him at the address listed on page 3 of this order. If any of the parties already sent Judge Moorer's hard copies to the Hugo L. Black United States Courthouse, those parties are **DIRECTED** to

JA14

email Judge Manasco's chambers at manasco_chambers@alnd.uscourts.gov, and the court will redirect the hard copies to Judge Moorer upon arrival. Signed by Judge Anna M Manasco on 12/22/2021. (DNW,) Modified on 12/22/2021 (FNC). (Entered: 12/22/2021)

- 12/22/2021 78 RESPONSE in Opposition re 69 MOTION for Preliminary Injunction filed by John Merrill. (LaCour, Edmund) (Entered: 12/22/2021)
- 12/22/2021 79 AFFIDAVIT re 78 Response in Opposition to Motion *Declaration in Support of Defendants' Response* by John Merrill. filed by John Merrill (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15)(LaCour, Edmund) (Entered: 12/22/2021)
- 12/23/2021 80 PLAINTIFFS' JOINT PRETRIAL REPORT. (Attachments: # 1 Exhibit Milligan, # 2 Exhibit Def 10, # 3 Exhibit Def 11, # 4 Exhibit Def 12, # 5 Exhibit Def 13, # 6 Exhibit Def 14, # 7 Exhibit Def 15, # 8 Exhibit Def 16, # 9 Exhibit Def 17, # 10 Exhibit Def 18, # 11 Exhibit Def 27, # 12 Exhibit Def 28, # 13 Exhibit Def 29,

JA15

14 Exhibit Def 30, # 15 Exhibit Def 49, # 16 Exhibit Def 68, # 17 Exhibit Def 92, # 18 Exhibit Def 93, # 19 Exhibit Def 94, # 20 Exhibit Def 95, # 21 Exhibit Def 96, # 22 Exhibit Def 97, # 23 Exhibit Def 100, # 24 Exhibit Def 101, # 25 Exhibit Def 102, # 26 Exhibit Def 103, # 27 Exhibit Def 104, # 28 Exhibit Def 105, # 29 Exhibit Def 106, # 30 Exhibit Def 138, # 31 Exhibit Def 139, # 32 Exhibit Def 140, # 33 Exhibit Def 141, # 34 Exhibit Def 143, # 35 Exhibit Def 144, # 36 Exhibit Def 145, # 37 Exhibit Def 146, # 38 Exhibit Def 150, # 39 Exhibit Def 152, # 40 Exhibit Def 153, # 41 Exhibit Def 154, # 42 Exhibit Def 155, # 43 Exhibit Def 156, # 44 Exhibit Def 157, # 45 Exhibit Def 158, # 46 Exhibit Def 162, # 47 Exhibit Def 163, # 48 Exhibit Def 164, # 49 Exhibit Singleton 32, # 50 Exhibit Singleton 33, # 51 Exhibit Singleton 34, # 52 Exhibit Singleton 42, # 53 Exhibit Singleton 43, # 54 Exhibit Singleton 51, # 55 Exhibit Singleton 60, # 56 Exhibit Singleton 61, # 57 Exhibit Singleton 52)(Ross, Deuel) Modified on 12/27/2021 (FNC). (Entered: 12/23/2021)

12/23/2021 81 PLAINTIFFS' CORRECTED JOINT PRETRIAL REPORT. (Ross, Deuel) Modified on 12/27/2021 (FNC). (Entered: 12/23/2021)

JA16

12/27/2021 82 DEFENDANT JOHN H. MERRILLS' EXHIBIT LIST (stipulated) by John Merrill. filed by John Merrill (Attachments: # 1 Exhibit Exhibit 1, # 2 Exhibit Exhibit 2, # 1 Exhibit Exhibit 3, # 4 Exhibit Exhibit 4, # 5 Exhibit Exhibit 5, # 6 Exhibit Exhibit 6, # 7 Exhibit Exhibit 7, # 8 Exhibit Exhibit 8, # 9 Exhibit Exhibit 9, # 10 Exhibit Exhibit 10, # 11 Exhibit Exhibit 11, # 12 Exhibit Exhibit 12, # 13 Exhibit Exhibit 13, # 14 Exhibit Exhibit 14, # 15 Exhibit Exhibit 15, # 16 Exhibit Exhibit 16, # 17 Exhibit Exhibit 17, # 18 Exhibit Exhibit 18, # 19 Exhibit Exhibit 19, # 20 Exhibit Exhibit 20, # 21 Exhibit Exhibit 21, # 22 Exhibit Exhibit 22, # 23 Exhibit Exhibit 23, # 24 Exhibit Exhibit 24, # 25 Exhibit Exhibit 25, # 26 Exhibit Exhibit 26, # 27 Exhibit Exhibit 27, # 28 Exhibit Exhibit 28, # 29 Exhibit Exhibit 29, # 30 Exhibit Exhibit 30, # 31 Exhibit Exhibit 31, # 32 Exhibit Exhibit 32, # 33 Exhibit Exhibit 33, # 34 Exhibit Exhibit 34, # 35 Exhibit Exhibit 35, # 36 Exhibit Exhibit 36, # 37 Exhibit Exhibit 37, # 38 Exhibit Exhibit 38, # 39 Exhibit Exhibit 39, # 40 Exhibit Exhibit 40)(Davis, James) Modified on 12/27/2021 (FNC). (Entered: 12/27/2021)

JA17

12/27/2021 83 STIPULATION *Secretary of State's Notice of Filing Defendant and DefendantIntervenor's Stipulated Exhibits* by John Merrill. filed by John Merrill (Attachments: # 1 Exhibit Exhibit 41, # 2 Exhibit Exhibit 42, # 3 Exhibit Exhibit 43, # 4 Exhibit Exhibit 44, # 5 Exhibit Exhibit 45, # 6 Exhibit Exhibit 46, # 7 Exhibit Exhibit 47, # 8 Exhibit Exhibit 48, # 9 Exhibit Exhibit 49, # 10 Exhibit Exhibit 50, # 11 Exhibit Exhibit 51, # 12 Exhibit Exhibit 52, # 13 Exhibit Exhibit 53, # 14 Exhibit Exhibit 54, # 15 Exhibit Exhibit 55, # LE Exhibit Exhibit 56, # 17 Exhibit Exhibit 57, # 18 Exhibit Exhibit 58, # 19 Exhibit Exhibit 59, # 20 Exhibit Exhibit 60, # 21 Exhibit Exhibit 61, # 22 Exhibit Exhibit 62, # 23 Exhibit Exhibit 63, # 24 Exhibit Exhibit 64, # 25 Exhibit Exhibit 65, # 26 Exhibit Exhibit 66, # 27 Exhibit Exhibit 67, # 28 Exhibit Exhibit 68, # 29 Exhibit Exhibit 69, # ai 1 Exhibit Exhibit 70, # 31 Exhibit Exhibit 71, # 32 Exhibit Exhibit 72, # 33 Exhibit Exhibit 73, # 34 Exhibit Exhibit 74, # 35 Exhibit Exhibit 75, # 36 Exhibit Exhibit 76, # 37 Exhibit Exhibit 77, # 38 Exhibit Exhibit 78, # 39 Exhibit Exhibit 79, # 40 Exhibit Exhibit 80)(Davis, James) (Entered: 12/27/2021)

- 12/27/2021 84 STIPULATION *Secretary of State's Notice of Filing Defendant and Defendant-Intervenor's Stipulated Exhibits* by John Merrill. filed by John Merrill (Attachments: # 1 Exhibit Exhibit 81, # 2 Exhibit Exhibit 82, # 3 Exhibit Exhibit 83, # 4 Exhibit Exhibit 84, # 5 Exhibit Exhibit 85, # 6 Exhibit Exhibit 86, # 7 Exhibit Exhibit 87, # 8 Exhibit Exhibit 88 – part 1, # 9 Exhibit Exhibit 88 – part 2, # 10 Exhibit Exhibit 88 – part 3, # 11 Exhibit Exhibit 88 – part 4, # 12 Exhibit Exhibit 88 – part 5, # 13 Exhibit Exhibit 89, # 14 Exhibit Exhibit 90, # 15 Exhibit Exhibit 91, # 16 Exhibit Exhibit 92, # 17 Exhibit Exhibit 93, # 18 Exhibit Exhibit 94, # 19 Exhibit Exhibit 95, # 20 Exhibit Exhibit 96, # 21 Exhibit Exhibit 97, # 22 Exhibit Exhibit 98, # 23 Exhibit Exhibit 99, # 24 Exhibit Exhibit 100) (Davis, James) (Entered: 12/27/2021)
- 12/27/2021 85 STIPULATION *Secretary of States. Notice of Filing Defendant and Defendant-Intervenor's Stipulated Exhibits* by John Merrill. filed by John Merrill (Attachments: # 1 Exhibit Exhibit 101, # 2 Exhibit Exhibit 102, # 3 Exhibit Exhibit 103, # 4 Exhibit Exhibit 104, # 5 Exhibit Exhibit 105, # 6 Exhibit Exhibit 106, # 7 Exhibit Exhibit

JA19

107, # 8 Exhibit Exhibit 108, # 9
Exhibit Exhibit 109, # 10 Exhibit
Exhibit 110, # n Exhibit Exhibit
111, # 12 Exhibit Exhibit 112, # 13
Exhibit Exhibit 113, # 14 Exhibit
Exhibit 114, # 15 Exhibit Exhibit
115, # 16 Exhibit Exhibit 116, # 17
Exhibit Exhibit 117, # 18 Exhibit
Exhibit 118, # 19 Exhibit Exhibit
119, # 20 Exhibit Exhibit 120, # 21
Exhibit Exhibit 121, # 22 Exhibit
Exhibit 122, # 23 Exhibit Exhibit
123, # 24 Exhibit Exhibit 124, # 25
Exhibit Exhibit 125)(Davis, James)
(Entered: 12/27/2021)

12/27/2021 86 STIPULATION *Secretary of State's
Notice of Filing Defendant and
Defendant-Intervenor's Stipulated
Exhibits* by John Merrill. filed by
John Merrill (Attachments: # 1 Ex-
hibit Exhibit 126, # 2 Exhibit Ex-
hibit 127, # 3 Exhibit Exhibit 128,
4 Exhibit Exhibit 129, # 5 Exhibit
Exhibit 130, # 6 Exhibit Exhibit
131, # 7 Exhibit Exhibit 132, # 8
Exhibit Exhibit 133, # 9 Exhibit
Exhibit 134, # 10 Exhibit Exhibit
135, # 11 Exhibit Exhibit 136, # 12
Exhibit Exhibit 137, # 13 Exhibit
Exhibit 138, # 14 Exhibit Exhibit
139, # 15 Exhibit Exhibit 140, # 16
Exhibit Exhibit 141, # 17 Exhibit
Exhibit 142, # 18 Exhibit Exhibit
143, # 19 Exhibit Exhibit 144, # 20
Exhibit Exhibit 145, # 21 Exhibit

JA20

Exhibit 146, # 22 Exhibit Exhibit
147, # 23 Exhibit Exhibit 148, # 24
Exhibit Exhibit 149, # 25 Exhibit
Exhibit 150)(Davis, James)
(Entered: 12/27/2021)

- 12/27/2021 87 STIPULATION *Secretary of State's
Notice of Filing Defendant and
Defendant-Intervenor's Stipulated
Exhibits* by John Merrill. filed by
John Merrill (Attachments: # 1 Ex-
hibit Exhibit 151, # 2 Exhibit Ex-
hibit 152, # 3 Exhibit Exhibit 153,
4 Exhibit Exhibit 154, # 5 Exhibit
Exhibit 155, # 6 Exhibit Exhibit
156, # 7 Exhibit Exhibit 157, # 8
Exhibit Exhibit 158, # 9 Exhibit
Exhibit 159, # 10 Exhibit Exhibit
160, # 11 Exhibit Exhibit 161, # 12
Exhibit Exhibit 162, # 13 Exhibit
Exhibit 163, # 14 Exhibit Exhibit
164, # 15 Exhibit Exhibit 165, # 16
Exhibit Exhibit 166, # 17 Exhibit
Exhibit 167, # 18 Exhibit Exhibit
168, # 19 Exhibit Exhibit 169, # 20
Exhibit Exhibit 170)(Davis, James)
(Entered: 12/27/2021)
- 12/27/2021 88 STIPULATION *Plaintiffs' Amended
Exhibit List to Joint Pretrial Order*
by Alabama State Conference of the
NAACP, Shalela Dowdy, Greater
Birmingham Ministries, Letetia
Jackson, Evan Milligan, Khadidah
Stone. filed by Alabama State Con-
ference of the NAACP, Shalela
Dowdy, Greater Birmingham

JA21

Ministries, Letetia Jackson, Evan Milligan, Khadidah Stone (Attachments: # 1 Exhibit Milligan 1, # 2 Exhibit Milligan 2, # 3 Exhibit Milligan 3, # 4 Exhibit Milligan 4, # 5 Exhibit Milligan 5, # 6 Exhibit Milligan 6, # 7 Exhibit Milligan 7, # 8 Exhibit Milligan 8, # 9 Exhibit Milligan 9, # 10 Exhibit Milligan 10, # 11 Exhibit Milligan 14, # 12 Exhibit Milligan 15, # 13 Exhibit Milligan 16, # 14 Exhibit Milligan 17, # 15 Exhibit Milligan 18, # 16 Exhibit Milligan 19, # 17 Exhibit Milligan 20, # 18 Exhibit Milligan 21, # 19 Exhibit Milligan 22, # 20 Exhibit Milligan 24, # 21 Exhibit Milligan 25, # 22 Exhibit Milligan 26, # 23 Exhibit Milligan 28, # 24 Exhibit Milligan 29, # 25 Exhibit Milligan 30, # 26 Exhibit Milligan 31, # 27 Exhibit Milligan 32, # 28 Exhibit Milligan 33, # 29 Exhibit Milligan 34, # 30 Exhibit Milligan 35, # 31 Exhibit Milligan 36, # 32 Exhibit Milligan 37, # 33 Exhibit Milligan 38, # 34 Exhibit Milligan 39, # 35 Exhibit Milligan 40, # 36 Exhibit Milligan 41, # 37 Exhibit Milligan 42, # 38 Exhibit Milligan 43, # 39 Exhibit Milligan 44, # 40 Exhibit Milligan 45, # 41 Exhibit Milligan 46, # 42 Exhibit Milligan 47)(Ross, Deuel) (Entered: 12/27/2021)

JA22

- 12/27/2021 89 STIPULATION *Plaintiffs' Amended Exhibit List to Joint Pretrial Order* by Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries, Letetia Jackson, Evan Milligan, Khadidah Stone. filed by Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries, Letetia Jackson, Evan Milligan, Khadidah Stone (Attachments: # 1 Exhibit Milligan 11, # 2 Exhibit Milligan 12, # 3 Exhibit Milligan 13, # 4 Exhibit Milligan 23, # 5 Exhibit Milligan 27)(Ross, Deuel) (Entered: 12/27/2021)
- 12/27/2021 92 STIPULATION *Plaintiffs' Second Amended Exhibit List* by Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries, Letetia Jackson, Evan Milligan, Khadidah Stone. filed by Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries, Letetia Jackson, Evan Milligan, Khadidah Stone (Attachments: # 1 Exhibit Milligan 48, # 2 Exhibit Milligan 49, # 3 Exhibit Milligan 50) (Ross, Deuel) (Entered: 12/27/2021)
- 12/27/2021 94 REPLY to Response to Motion re 69 MOTION for Preliminary Injunction filed by Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries,

JA23

Letetia Jackson, Evan Milligan,
Khadidah Stone. (Ross, Deuel)
(Entered: 12/27/2021)

01/03/2022 98 **ORDER:** Due to the current pandemic circumstances, the court has decided to make available to the public a livestream of the consolidated preliminary injunction hearing in this case. Any member of the press or interested citizen may obtain the information necessary to access the livestream by following the instructions that appear on the website for the Northern District of Alabama (<https://www.alnd.uscourts.gov/instructions-view-public-hearing>). The livestream also will be broadcast in the Jury Assembly Room of the Hugo Black Courthouse in Birmingham, Alabama, until further notice, per the courts prior orders. Signed by Judge Anna M Manasco on 1/3/2022. (DNW)
(Entered: 01/03/2022)

01/04/2022 Minute Entry for proceedings held before Circuit Judge Stan Marcus and District Judges Anna M Manasco and Terry Moorer: Motion Hearing held on 1/4/2022 re 69 MOTION for Preliminary Injunction. Hearing begins; verbal notice of presence; exhibits discussed and noted which were admitted and objected to; objected exhibits to be addressed at later time during the

JA24

hearing; no opening statements; testimony taken of plff Singleton with direct and cross, witness excused; testimony of N. Davis, witness qualified as an expert as noted on the record; direct and cross; lunch break; resume; cont. examination of N. Davis; witness excused; testimony of plff Milligan, direct and cross, witness excused; testimony of Kosuke Imai, witness qualified as an expert as noted on the record; break; resume; break; resume; court adj to 1/5/2022 at 9:00 AM central time. (Court Reporter Christina Decker.) (FNC) (Entered: 01/04/2022)

01/05/2022

Minute Entry for proceedings held before Circuit Judge Stan Marcus and District Judges Anna M Manasco and Terry Moorer: Motion Hearing- DAY 2 – held on 1/5/2022 re 69 MOTION for Preliminary Injunction. Hearing begins; testimony of Kosuke Imai continued/redirect; witness excused; Ryan Williamson called; qualified as an expert as to this hearing, as stated on the record; direct, cross and redirect; witness excused; Witness S. Dowdy called; direct and cross; lunch break; resume; cont. cross; redirect; witness excused; Section 2 claims begin; Caster Plff calls Expert William Cooper, court qualifies witness as expert, as stated on the record; cross; redirect;

JA25

court questions for witness; witness excused as to Section 2 claims; Def direct of Cooper as to Singleton claims; no cross; witness excused; discussions of agenda for 1/6; court adj to 1/6/2022 at 9:00 AM central time. (Court Reporter Christina Decker.) (FNC) (Entered: 01/05/2022)

01/06/2022

Minute Entry for proceedings held before Circuit Judge Stan Marcus and District Judges Anna M Manasco and Terry Moorer: Motion Hearing- DAY 3 – held on 1/6/2022 re 69 MOTION for Preliminary Injunction. Hearing begins; discussions regarding schedule for today; Milligan plffs call Moon Duchin, witness qualified as an expert, as stated on the record; argument re: Exh M-48, taken under advisement; break; resume; objections addressed and o/r Exh M-48 received, as stated on the record; cross; break for lunch; resume; cross continues; redirect and recross, witness excused; Caster Plffs call Dr. Maxwell Palmer; court discusses scheduling issues; testimony of Dr. Palmer begins; witness qualified witness as expert, as stated on the record; direct begins; cross; witness excused; discussions re: starting new witness and start time for 1/7/22; Def Merrill calls Tom Bryan – court qualifies witness as an expert, as stated on the

JA26

record; direct begins – court adj until 1/7/2022 at 8:30 AM central time. (Court Reporter Christina Decker.) (FNC) (Entered: 01/06/2022)

01/07/2022

Minute Entry for proceedings held before Circuit Judge Stan Marcus and District Judges Anna M Manasco and Terry Moorer: Motion Hearing- DAY 4 – held on 1/7/2022 re 69 MOTION for Preliminary Injunction. Hearing begins; pre hearing discussions regarding due date of Findings of Facts and Conclusions of Law which is now due by Friday, Jan 14; direct of Tom Bryan cont; break; direct cont; cross by Caster; lunch break, cont cross by Caster; cross by Milligan; cross by Singleton; redirect by def Merrill; questions by the court; court adj until 1/10/2022 at 9:00 AM central time. (Court Reporter Christina Decker.) (FNC) (Entered: 01/07/2022)

01/10/2022

100

TEXT ORDER: The requirement that, [w]ithin five days of the completion of the preliminary injunction hearing, the parties in Singleton and Milligan shall file proposed findings of fact and conclusions of law for the panels consideration in the panels Order on Motions for Consolidation and Joinder, and Scheduling Order, Doc. 45 in Singleton, Case No. 2:21-cv-1291-AMM, and Doc. 40 in Milligan, Case

JA27

No. 2:21-cv-1530-AMM, is VACATED. That order remains in effect as to all other provisions contained therein. The parties in Singleton and Milligan are ORDERED to file proposed findings of fact and conclusions of law for the panel's consideration by midnight Central Standard Time on Friday, January 14, 2022. Signed by Judge Anna M Manasco on 1/10/2022. (FNC) (Entered: 01/10/2022)

01/10/2022

Minute Entry for proceedings held before Circuit Judge Stan Marcus and District Judges Anna M Manasco and Terry Moorer: Motion Hearing- DAY 5 – held on 1/10/2022 re 69 MOTION for Preliminary Injunction. Hearing begins; pre hearing discussions regarding Caster Exh 106 – parties to discuss what part of the exhibit to be admitted – court w/h ruling on admission of exhibit; time and need for closing arguments discussed; Milligan calls Dr. Joseph Bagley; witness qualified as an expert, as stated on the record; direct; cross; redirect; lunch break; resume; court notifies parties plffs will have 90 mins total for closing – plffs can reserve some time for rebuttal and defs will have 90 mins total for closing; further discussions re: admission of def X17, arguments, court o/r objections as stated on the

JA28

record; Milligan plffs call B. Liu; witness qualified as an expert, as stated on the record; direct begins; cross; redirect; court questions; witness excused; Caster Plff calls Benjamin Jones and direct begins; cross; witness excused; court adj until 1/11/2022 at 9:00 AM central time. (Court Reporter Christina Decker.) (FNC) (Entered: 01/10/2022)

01/11/2022

Minute Entry for proceedings held before Circuit Judge Stan Marcus and District Judges Anna M Manasco and Terry Moorer: Motion Hearing- DAY 6 – held on 1/11/2022 re 69 MOTION for Preliminary Injunction. Hearing begins; discussions regarding order of witnesses; Def calls Dr. Trey Hood; court certifies witness as an expert, as stated on the record; direct by State; cross by Milligan; cross by Caster; cross by Singleton; redirect; witness excused; lunch break; resume; Caster calls Dr. Bridgett King; court qualifies witness as an expert, as stated on the record; direct begins; cross by state; state moves to admit DX 158; argument; court reserves ruling; state moves to admit DX 153; argument; court reserves ruling; redirect; witness excused; Caster calls Dr. Marcus Caster; direct; cross by state; witness excused; court adj until 1/12/2022 at 8:30 AM central time.

JA29

- (Court Reporter Christina Decker.)
(FNC) (Entered: 01/11/2022)
- 01/12/2022 Minute Entry for proceedings held before Circuit Judge Stan Marcus and District Judges Anna M Manasco and Terry Moorer: Motion Hearing-DAY 7 – held on 1/12/2022 re 69 MOTION for Preliminary Injunction. Hearing begins; State calls Bradley Byrne; direct; cross by Milligan; cross by Caster; cross by Singleton; redirect; court questions; witness excused; presentation of evidence is closed; no rebuttal; objected exhibits addressed as stated on the record; lunch; Singleton close, court questions; Caster close, court questions; Milligan close, court questions; Merrill close, court questions; rebuttal by Singleton, Milligan and Caster; court addresses the parties; questions by the court; hearing adj.
(Court Reporter Christina Decker.)
(FNC) (Entered: 01/12/2022)
- 01/14/2022 102 Statement of Facts *Proposed Findings of Fact and Conclusions of Law* by John Merrill. filed by John Merrill (LaCour, Edmund)
(Entered: 01/14/2022)
- 01/14/2022 103 Statement of Facts *Proposed Findings of Fact and Conclusions of Law* by Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries, Letetia

JA30

Jackson, Evan Milligan, Khadidah Stone. filed by Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries, Letetia Jackson, Evan Milligan, Khadidah Stone (Ross, Deuel) (Entered: 01/14/2022)

- 01/16/2022 104 NOTICE by John Merrill re 102 Statement of Facts *Tables of Authorities for Defs' Proposed Findings of Fact and Conclusions of Law* (LaCour, Edmund) (Entered: 01/16/2022)
- 01/18/2022 105 Transcript of Proceedings NOTICE: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. (A copy can be obtained at <http://www.alnd.uscourts.gov/local/court%20fonns/transcripts/Transcript%20Redaction%20Policy.pdf>) See Transcript Redaction Policy (Attachments: # 1 2, # 2 3, # 3 4, # 4 5, # 5 6, # 6 7) (DNW) (Entered: 01/18/2022)
- 01/24/2022 106 **ORDER:** A status conference is set for **1:00 PM CENTRAL STANDARD TIME on WEDNESDAY, JANUARY 26, 2022**, by Zoom. The Zoom information will be provided to all

JA31

- parties at a later date. Signed by Judge Anna M Manasco on 1/24/2022. (DNW) (Entered: 01/24/2022)
- 01/24/2022 107 PRELIMINARY INJUNCTION, MEMORANDUM OPINION, AND ORDER. Signed by Judge Anna M Manasco on 1/24/2022. (KMB) (Entered: 01/24/2022)
- 01/25/2022 108 NOTICE OF APPEAL to the Supreme Court of the United States as to 107 Order on Motion for Preliminary Injunction by John Merrill. Filing fee \$ 505, receipt number 1126-4000275 B4601118124).(LaCour, Edmund) Modified on 1/25/2022 (DNW). Modified on 1/25/2022 (KEK). (Entered: 01/25/2022)
- 01/25/2022 109 NOTICE OF APPEAL to the United States Court of Appeals for the Eleventh Circuit as to 107 Order on Motion for Preliminary Injunction by John Merrill. Filing fee \$ 505, receipt number 1126-4000295 (B4601118123). (LaCour, Edmund) Modified on 1/25/2022 (DNW,). Modified on 1/25/2022 (KEK). (Entered: 01/25/2022)
- 01/25/2022 110 Emergency MOTION to Stay re 107 Order on Motion for Preliminary Injunction, 109 Notice of Appeal, 108 Notice of Appeal, *Emergency Motion for Stay Pending Appeal* by John Merrill. (LaCour, Edmund) (Entered: 01/25/2022)

JA32

- 01/25/2022 111 TEXT ORDER. Plaintiffs are DIRECTED to file their response to the Defendants' Emergency Motion for Stay Pending Appeal at or before 8:00 am Central Standard Time on January 26, 2022. Signed by Judge Anna M Manasco on 1/25/2022. (KMB) (Entered: 01/25/2022)
- 01/25/2022 112 NOTICE of Transmittal to 11th circuit regarding Notice of Appeal, Doc. 108. (DNW,) (Entered: 01/25/2022)
- 01/25/2022 113 Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 108 Notice of Appeal, (DNW) (Entered: 01/25/2022)
- 01/25/2022 114 NOTICE of transmittal to the 11th circuit as to Doc. 109 (DNW,) (Entered: 01/25/2022)
- 01/25/2022 115 Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 109 Notice of Appeal, (DNW) (Entered: 01/25/2022)
- 01/26/2022 116 RESPONSE in Opposition re 110 Emergency MOTION to Stay re 107 Order on Motion for Preliminary Injunction, 109 Notice of Appeal, 108 Notice of Appeal, *Emergency Motion for Stay Pending Appeal* filed by Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries, Letetia Jackson, Evan Milligan, Khadidah

JA33

- Stone, Adia Winfrey. (Ross, Deuel)
(Entered: 01/26/2022)
- 01/26/2022 117 NOTICE – 108 Notice of Appeal to the Supreme Court emailed to the Supreme Court for review. (KEK) (Additional attachment(s) added on 1/26/2022: # 1 Reply from Supreme Court) (KEK,). (Entered: 01/26/2022)
- 01/26/2022 Minute Entry for proceedings held before Circuit Judge Stan Marcus and District Judges Anna M Manasco and Terry Moorer: Status Conference held on 1/26/2022. (Court Reporter Christina Decker.) (FNC) (Entered: 01/26/2022)
- 01/26/2022 118 TEXT ORDER. A Status Conference set for Friday, January 28, 2022 at 03:00 PM by Zoom before Circuit Judge Stan Marcus and District Judges Anna M Manasco and Terry Moorer. The court will provide the zoom information to the parties by separate email. Signed by Judge Anna M Manasco on 1/26/2022. (FNC) (Entered: 01/26/2022)
- 01/26/2022 119 ORDER ON MOTION TO CLARIFY. Signed by Judge Anna M Manasco on 1/26/2022. (KMB) (Entered: 01/26/2022)
- 01/27/2022 120 ORDER DENYING DEFENDANTS' EMERGENCY MOTION FOR STAY PENDING APPEAL. Signed by Judge Anna M Manasco on 1/27/2022. (KMB) (Entered: 01/27/2022)

JA34

- 01/28/2022 121 STATUS REPORT *re: Proposed Special Masters* by Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries, Letetia Jackson, Evan Milligan, Khadidah Stone. filed by Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries, Letetia Jackson, Evan Milligan, Khadidah Stone (Attachments: # 1 Exhibit A – CV of Dr. Nathaniel Persily)(Rosborough, Davin) (Entered: 01/28/2022)
- 01/28/2022 122 NOTICE by John Merrill *Notice Regarding Defendants' Position on Issues Raised by the Court* (Davis, James) (Entered: 01/28/2022)
- 01/28/2022 Minute Entry for proceedings held before Circuit Judge Stan Marcus and District Judges Anna M Manasco and Terry Moorner: Status Conference held on 1/28/2022. (Court Reporter Christina Decker.) (FNC) (Entered: 01/28/2022)
- 01/28/2022 123 TEXT ORDER. Status Conference set for Wednesday, February 2, 2022 at 02:00 PM by Zoom before Circuit Judge Stan Marcus and District Judges Anna M Manasco and Terry Moorner. The court will provide the zoom information to the parties by email. Signed by Judge Anna M Manasco on 1/28/2022. (FNC) (Entered: 01/28/2022)

JA35

- 02/01/2022 124 Exhibit List of Plaintiff Milligan from PI Hearing, held January 4, 2022 through January 12, 2022. Exhibits e-filed prior to the PI Hearing and can be found in Docs 88, (Exhibits 1-10; 14-22; 24-26 and 28-47); 89, (Exhibits 11-13, 23 and 27); and 92, (Exhibits 4850). Exhibit 51 admitted during the PI hearing, is attached. (Attachments: # 1 Exhibit M51)(FNC) (Entered: 02/01/2022)
- 02/01/2022 125 Exhibit List for def Merrill from PI Hearing, held January 4, 2022 through January 12, 2022. Exhibits e-filed prior to the PI Hearing and can be found at Docs. 82 (Exhibits 140); 83 (Exhibits 41-80); 84 Exhibits 81-100; 85 Exhibits 101-125; 86 (Exhibits 126-150) and 87 (Exhibits 151-170); Exhibit 171 admitted during the PI hearing is attached. (Attachments: # 1 Exhibit 171)(FNC) (Entered: 02/01/2022)
- 02/01/2022 126 NOTICE by John Merrill (*Notice Regarding Defendants' Position on Issues Raised by the Court*) (Davis, James) (Entered: 02/01/2022)
- 02/01/2022 127 NOTICE by Alabama State Conference of the NAACP, Shalela Dowdy, Greater Birmingham Ministries, Letetia Jackson, Evan Milligan, Khadidah Stone *re: Court Inquiry Regarding Remedial Proceedings* (Rosborough, Davin) (Entered: 02/01/2022)

JA36

- 02/02/2022 128 TEXT ORDER. The Status Conference set for 2:00 PM, this date, is CANCELLED. Signed by Judge Anna M Manasco on 2/2/2022. (FNC) (Entered: 02/02/2022)
- 02/03/2022 129 **ORDER:** The parties are **ADVISED** that if the Legislature is unable to enact a new map as of February 7, 2022, the court intends to draw on its inherent authority and, pursuant to Federal Rule of Civil Procedure 53, to issue a detailed order appointing Mr. Allen as Special Master and retaining Dr. Persily as an expert cartographer, with instructions (1) not to incur costs until February 8, 2022 and, thereafter (2) to consult all parties about the parties proposals for drawing a remedial map and to obtain the supporting data at the earliest opportunity after that date. Signed by Judge Anna M Manasco on 2/3/2022. (DNW,) (Entered: 02/03/2022)
- 02/07/2022 130 Order of the court appointing Special Master and expert cartographer, and providing instructions to parties. Signed by Judge Anna M Manasco on 2/7/2022. (KMB) (Entered: 02/07/2022)
-

JA37

**U.S. District Court
Northern District of Alabama (Southern)
CIVIL DOCKET FOR CASE #: 2:21-cv-01536-AMM**

Caster et al v. Merrill

Assigned to: Judge Anna M Manasco

Case in other court: Alabama Middle, 2:21-cv-00751

Cause: 42:1973 Voting Rights Act

Date Filed # Docket Text

11/04/2021 3 COMPLAINT for Declaratory and Injunctive Relief against John H. Merrill (Filing fee \$402.00 receipt number 4602065148.), filed by Manasseh Powell, Bobby Lee DeBouse, Ronald Smith, LaKeisha Chestnut, Wendell Thomas, Marcus Caster, Benjamin Jones, Rodney Allen Love. (Attachments: # 1 Civil Cover Sheet, # 2 fee receipt)(djy,) Modified on 11/8/2021 to clarify text as reflected in pleading (am,). [Transferred from Alabama Middle on 11/16/2021.] (Entered: 11/06/2021)

11/08/2021 7 **ORDER: it is ORDERED that the parties shall SHOW CAUSE, if any there be, on or before 11/15/2021, why this action should not be transferred to the Northern District of Alabama, as further set out in Order. Signed by Honorable Judge William Keith Watkins on 11/8/2021. (am,)** [Transferred

JA38

- 11/16/2021 30 from Alabama Middle on 11/16/2021.] (Entered: 11/08/2021)
- 11/16/2021 30 **ORDER: it is ORDERED that this action be transferred immediately to the United States District Court for the Northern District of Alabama, as further set out in Order. Signed by Honorable Judge William Keith Watkins on 11/16/2021. (am,)** [Transferred from Alabama Middle on 11/16/2021.] (Entered: 11/16/2021)
- 11/16/2021 Case transferred to Northern District of Alabama; Electronically transferred via CM/ECF transfer to Clerk. (NO PDF attached to this entry) (am,) [Transferred from Alabama Middle on 11/16/2021.] (Entered: 11/16/2021)
- 11/16/2021 31 Case transferred in from District of Alabama Middle; Case Number 2:21-cv-00751. Original file certified copy of transfer order and docket sheet received. (Entered: 11/16/2021)
- 11/18/2021 35 NOTICE by John H Merrill *Notice of Filing* (Attachments: # 1 Exhibit Motion for Status Conference)(Davis, James) (Entered: 11/18/2021)
- 11/18/2021 36 ORDER setting deadline on response to motions in Singleton and Milligan. Signed by Judge Anna M

JA39

- Manasco on 11-18-2021. (TGC)
(Entered: 11/18/2021)
- 11/18/2021 37 ORDER Rule 16 Conference set for 11/23/2021 10:00 AM CST. Signed by Judge Anna M Manasco on 11-18-2021. (TGC) (Entered: 11/18/2021)
- 11/22/2021 38 RESPONSE to *Defendant's Motion to Consolidate* filed by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas. (Rouco, Richard) (Entered: 11/22/2021)
- 11/22/2021 39 STATUS REPORT Joint by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas. filed by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas (Rouco, Richard) (Entered: 11/22/2021)
- 11/23/2021 Minute Entry for proceedings held before Circuit Judge Marcus and Judges Manasco and Moorer: Scheduling Conference held on 11/23/2021. (Court Reporter Teresa Roberson.) (FNC) (Entered: 11/23/2021)

11/23/2021 40 **SCHEDULING ORDER FOR PRELIMINARY INJUNCTION PROCEEDINGS** - the following schedule is ORDERED in connection with the Plaintiffs anticipated motion for preliminary injunction: On or before **DECEMBER 7, 2021**, the parties shall file a joint statement of facts that are stipulated for purposes of preliminary injunction proceedings. The Plaintiffs shall file their motion for preliminary injunctive relief on or before **DECEMBER 15, 2021**. The Secretary shall file any objections to the Plaintiffs motion on or before **DECEMBER 22, 2021**. The Plaintiffs shall file any reply in support of their motions for preliminary injunctive relief within five days of the filing of any objection. On or before **DECEMBER 10, 2021**, the parties shall exchange any expert reports related to the motion for preliminary injunction. On or before **DECEMBER 20, 2021**, the parties shall exchange any expert rebuttal reports related to the motion for preliminary injunction. On or before **DECEMBER 17, 2021**, the parties shall complete all discovery related to the motion for preliminary injunction, other than the filing of the expert rebuttal reports. Any other motions related to the

JA41

application for preliminary injunctive relief or hearing thereof shall be filed on or before close of business on **DECEMBER 17, 2021. At or before 4:00 pm Central Standard Time on DECEMBER 23, 2021**, the parties shall file a joint pretrial report as directed. The court SETS a hearing on the Plaintiffs motion for preliminary injunctive relief on **JANUARY 4, 2022, at 9:00 a.m. Central Standard Time** in Courtroom 8 in the Hugo L. Black United States Courthouse. Within five days of the completion of the preliminary injunction hearing, the parties shall file proposed findings of fact and conclusions of law for the court's consideration. Signed by Judge Anna M Manasco on 11/23/2021. (KAM) (Entered: 11/23/2021)

- 11/30/2021 42 *Defendant's* ANSWER to 3 Complaint, by John H Merrill.(Davis, James) (Entered: 11/30/2021)
- 12/07/2021 44 STIPULATION *Joint Stipulation of Facts* by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas. filed by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love,

JA42

Manasseh Powell, Ronald Smith,
Wendell Thomas (Rouco, Richard)
(Entered: 12/07/2021)

- 12/13/2021 45 **TEXT ORDER:** The parties were ordered to exchange any expert reports related to the motion for preliminary injunction on or before December 10, 2021, and to exchange any rebuttal reports related to that motion on or before December 20, 2021, Doc. 40 . In light of the preliminary injunction hearing set on January 4, 2022, the parties are **ORDERED** to file on or before **DECEMBER 14, 2021**, any expert reports exchanged, and to file on or before **DECEMBER 21, 2021**, any rebuttal reports exchanged. Signed by Judge Anna M Manasco on 12/13/2021. (DNW) (Entered: 12/13/2021)
- 12/14/2021 46 Unopposed MOTION for Protective Order by John H Merrill. (Attachments: # 1 Exhibit A - Proposed Protective Order)(Davis, James) (Entered: 12/14/2021)
- 12/14/2021 47 Unopposed MOTION for Protective Order (AMENDED) by John H Merrill. (Attachments: # 1 Exhibit A - Proposed Protective Order)(Davis, James) (Entered: 12/14/2021)
- 12/14/2021 48 NOTICE by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen

JA43

Love, Manasseh Powell, Ronald
Smith, Wendell Thomas *of Filing*
Expert Report: William S. Cooper
(Attachments: # 1 Exhibit A, # 2
Exhibit B, # 3 Exhibit C, # 4 Ex-
hibit D-1, # 5 Exhibit D-2, # 6 Ex-
hibit D-3 District 1, # 7 Exhibit D-3
District 2, # 8 Exhibit D-3 District
7, # 9 Exhibit D-4, # 10 Exhibit E-1,
11 Exhibit E-2, # 12 Exhibit E-3,
13 Exhibit E-4, # 14 Exhibit F-1,
15 Exhibit F-2, # 16 Exhibit G-1,
17 Exhibit G-2, # 18 Exhibit G-3
District 2, # 19 Exhibit G-3 District
7, # 20 Exhibit G-4, # 21 Exhibit
H-1, # 22 Exhibit 11-2, # 23 Exhibit
11-3 District 2, # 24 Exhibit 11-3
District 7, # 25 Exhibit 11-4, # 26
Exhibit I-1, # 27 Exhibit I-2, # 28
Exhibit I-3 District 2, # 29 Exhibit
I-3 District 7, # 30 Exhibit I-4, # 31
Exhibit J-1, # 32 Exhibit J-2, # 33
Exhibit J-3 District 2, # 34 Exhibit
J-3 District 7, # 35 Exhibit J-4, # 36
Exhibit K-1, # 37 Exhibit K-2, # 38
Exhibit K-3 District 2, # 39 Exhibit
K-3 District 7, # 40 Exhibit K-4,
41 Exhibit L-1, # 42 Exhibit L-2,
43 Exhibit L-3 District 2, # 44
Exhibit L-3 District 7, # 45 Exhibit
L-4, # 46 Exhibit M-1, # 47 Exhibit
M-2, # 48 Exhibit N-1, # 49 Exhibit
N-2, # 50 Exhibit O-1, # 51 Exhibit
O-2, # 52 Exhibit P-1, # 53 Exhibit
P-2, # 54 Exhibit Q-1, # 55 Exhibit

JA44

- Q-2, # 56 Exhibit R-1, # 57 Exhibit R-2)(Rouco, Richard) (Entered: 12/14/2021)
- 12/14/2021 49 NOTICE by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas *of Filing Expert Report: Max Palmer* (Rouco, Richard) (Entered: 12/14/2021)
- 12/14/2021 50 NOTICE by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas *of Filing Expert Report: Bridgett King* (Rouco, Richard) (Entered: 12/14/2021)
- 12/14/2021 51 NOTICE by John H Merrill re 45 Order,, (Attachments: # 1 Exhibit 1 Bryan report -Singleton, # 2 Exhibit 2 Bryan report - Milligan & Caster, # 3 Exhibit 3 Bryan cv, # 4 Exhibit 4 Hood report)(Davis, James) (Entered: 12/14/2021)
- 12/14/2021 53 PROTECTIVE ORDER. Signed by Judge Anna M Manasco on 12/14/2021. (FNC) (Entered: 12/14/2021)
- 12/14/2021 54 TEXT ORDER DENYING AS MOOT 46 , Motion for Protective Order. Signed by Judge Anna M Manasco on 12/14/2021. (FNC) (Entered: 12/14/2021)

JA45

- 12/15/2021 56 MOTION for Preliminary Injunction by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Affidavit Declaration of Lalitha D. Maddhuri)(Maddhuri, Lalitha) (Entered: 12/15/2021)
- 12/17/2021 58 Joint MOTION for Hearing *Request for Pre-Hearing Conference* by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas. (Rouco, Richard) (Entered: 12/17/2021)
- 12/17/2021 59 TEXT ORDER granting 58 . The parties' joint motion for a pre-hearing conference is GRANTED. A conference is SET for Monday, December 20, 2021, at 4:00 p.m. CST. The conference will be held by Zoom. The court will email the parties a link to participate. Signed by Judge Anna M Manasco on 12-17-2021. (TGC) (Entered: 12/17/2021)

JA46

- 12/20/2021 60 MOTION to Intervene by Jim McClendon, Chris Pringle. (Attachments: # 1 Exhibit A) (Walker, J) (Entered: 12/20/2021)
- 12/21/2021 64 NOTICE by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas *of Filing Rebuttal Expert Report of Dr Bridgett King* (Rouco, Richard) (Entered: 12/21/2021)
- 12/21/2021 65 NOTICE by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas *of Filing Rebuttal Expert Report of William S. Cooper* (Attachments: # 1 Exhibit A-1, # 2 Exhibit A-2, # 3 Exhibit A-3 District 2, # 4 Exhibit A-3 District 7, # 5 Exhibit B-1, # 6 Exhibit B-2, # 7 Exhibit B-3, # 8 Exhibit B-4, # 9 Exhibit B-5, # 10 Exhibit B-6, # 11 Exhibit B-7, # 12 Exhibit C-1, # 13 Exhibit C-2, # 14 Exhibit C-3, # 15 Exhibit C-4, # 16 Exhibit D-1, # 17 Exhibit D-2, # 18 Exhibit D-3)(Rouco, Richard) (Entered: 12/21/2021)
- 12/21/2021 66 NOTICE by John H Merrill (*Secretary of State's Notice of Filing Supplemental Expert Reports*) (Attachments: # 1 Exhibit A - Thomas

JA47

Bryan - Supplemental Report Final, # 2 Exhibit B - MV Hood III - AL Supplemental Expert Report)(Davis, James) (Entered: 12/21/2021)

- 12/21/2021 67 **TEXT ORDER:** During the conference held on December 20, 2021, the parties in Caster, Case No. 2:21-cv-1536-AMM, Singleton, Case No. 2:21-cv-1291-AMM, and Milligan, Case No. 2:21-cv-1530-AMM, agreed to coordinate in drafting a joint proposed order of proceedings for the preliminary injunction hearing set for January 4, 2021. Accordingly, the parties are **ORDERED** to file in each case on or before **5:00 PM CENTRAL STANDARD TIME ON DECEMBER 23, 2021**, such joint proposed order of proceedings. Signed by Judge Anna M Manasco on 12/21/2021. (DNW) (Entered: 12/21/2021)
- 12/21/2021 68 **RESPONSE** to Motion re 60 MOTION to Intervene filed by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas. (Rouco, Richard) (Entered: 12/21/2021)
- 12/21/2021 69 **TEXT ORDER:** This case is before the court on a motion to intervene

JA48

by Alabama Senator Jim McClendon and Alabama Representative Chris Pringle. Doc. 60 . Senator McClendon and Representative Pringle move to intervene as defendants in their official capacities. Id. at 1. For many of the reasons offered in the motion, which, notably, is unopposed by all of the parties to this action, the motion is **GRANTED**. Signed by Judge Anna M Manasco on 12/21/2021. (DNW,) (Entered: 12/21/2021)

- 12/22/2021 70 **ORDER:** The court has decided to conduct the preliminary injunction hearing that will begin on January 4, 2022, remotely via Zoom. The Zoom information will be provided to all parties at a later date. Signed by Judge Anna M Manasco on 12/22/2021. (DNW) (Entered: 12/22/2021)
- 12/22/2021 71 RESPONSE in Opposition re 56 MOTION for Preliminary Injunction filed by John H Merrill. (LaCour, Edmund) (Entered: 12/22/2021)
- 12/22/2021 72 AFFIDAVIT re 71 Response in Opposition to Motion *Declaration in Support of Defendants' Response* by John H Merrill. filed by John H Merrill (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6,

JA49

7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15)(LaCour, Edmund)
(Entered: 12/23/2021)

12/23/2021 73 JOINT PRETRIAL REPORT filed by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas. (Attachments: # 1 Exhibit 1-10, # 2 Exhibit 11-20, # 3 Exhibit 21-30, # 4 Exhibit 31-40, # 5 Exhibit 41-50, # 6 Exhibit 51-60, # 7 Exhibit 61-70, # 8 Exhibit 71-80, # 9 Exhibit 81-90, # 10 Exhibit 91-103)(Khanna, Abha) Modified on 12/27/2021 (FNC). (Entered: 12/23/2021)

12/23/2021 74 STIPULATION Regarding Coordinated Preliminary Injunction Hearing and Discovery by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas. filed by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas (Rouco, Richard) (Entered: 12/23/2021)

JA50

- 12/23/2021 75 PLAINTIFFS' EXHIBITS TO PRE-TRIAL REPORT 73 filed by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas. (Attachments: # 1 Exhibit 11-20, # 2 Exhibit 21-30, # 3 Exhibit 31-40, # 4 Exhibit 41-50, # 5 Exhibit 51-60, # 6 Exhibit 61-70, # 7 Exhibit 71-80, # 8 Exhibit 81-90, # 9 Exhibit 91-103)(Khanna, Abha) Modified on 12/27/2021 (FNC). (Entered: 12/23/2021)
- 12/23/2021 76 STIPULATION Secretary of State's Notice of Filing Defendant and Defendant-Intervenor's Stipulated Exhibits by John H Merrill. filed by John H Merrill (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 28, # 29 Exhibit 29, # 30 Exhibit 30, # 31 Exhibit 31, # 32 Exhibit 32,

JA51

33 Exhibit 33, # 34 Exhibit 34,
35 Exhibit 35, # 36 Exhibit 36,
37 Exhibit 37, # 38 Exhibit 38,
39 Exhibit 39, # 40 Exhibit
40)(Davis, James) (Entered:
12/23/2021)

12/23/2021 77 STIPULATION *Secretary of State's
Notice of Filing Defendant and
Defendant-Intervenor's Stipulated
Exhibits* by John H Merrill. filed by
John H Merrill (Attachments: # 1
Exhibit 41, # 2 Exhibit 42, # 3 Ex-
hibit 43, # 4 Exhibit 44, # 5 Exhibit
45, # 6 Exhibit 46, # 7 Exhibit 47,
8 Exhibit 48, # 9 Exhibit 49, # 10
Exhibit 50, # 11 Exhibit 51, # 12
Exhibit 52, # 13 Exhibit 53, # 14
Exhibit 54, # 15 Exhibit 55, # 16
Exhibit 56, # 17 Exhibit 57, # 18
Exhibit 58, # 19 Exhibit 59, # 20
Exhibit 60, # 21 Exhibit 61, # 22
Exhibit 62, # 23 Exhibit 63, # 24
Exhibit 64, # 25 Exhibit 65, # 26
Exhibit 66, # 27 Exhibit 67, # 28
Exhibit 68, # 29 Exhibit 69, # 30
Exhibit 70, # 31 Exhibit 71, # 32
Exhibit 72, # 33 Exhibit 73, # 34
Exhibit 74, # 35 Exhibit 75, # 36
Exhibit 76, # 37 Exhibit 77, # 38
Exhibit 78, # 39 Exhibit 79, # 40
Exhibit 80)(Davis, James) (Entered:
12/23/2021)

12/23/2021 78 STIPULATION *Secretary of State's
Notice of Filing Defendant and
Defendant-Intervenor's Stipulated*

JA52

Exhibits by John H Merrill. filed by John H Merrill (Attachments: # 1 Exhibit 81, # 2 Exhibit 82, # 3 Exhibit 83, # 4 Exhibit 84, # 5 Exhibit 85, # 6 Exhibit 86, # 7 Exhibit 87, # 8 Exhibit 88, # 9 Exhibit 88, # 10 Exhibit 88, # n Exhibit 88, # 12 Exhibit 88, # 13 Exhibit 89, # 14 Exhibit 90, # 15 Exhibit 91, # 16 Exhibit 92, # 17 Exhibit 93, # 18 Exhibit 94, # 19 Exhibit 95, # 20 Exhibit 96, # 21 Exhibit 97, # 22 Exhibit 98, # 23 Exhibit 99, # 24 Exhibit 100)(Davis, James) (Entered: 12/23/2021)

12/23/2021 79 STIPULATION *Secretary of State's Notice of Filing Defendant and Defendant-Intervenor's Stipulated Exhibits* by John H Merrill. filed by John H Merrill (Attachments: # 1 Exhibit 101, # 2 Exhibit 102, # 3 Exhibit 103, # 4 Exhibit 104, # 5 Exhibit 105, # 6 Exhibit 106, # 7 Exhibit 107, # 8 Exhibit 108, # 9 Exhibit 109, # 10 Exhibit 110, # 11 Exhibit 111, # 12 Exhibit 112, # 13 Exhibit 113, # 14 Exhibit 114, # 15 Exhibit 115, # 16 Exhibit 116, # 17 Exhibit 117, # 18 Exhibit 118, # 19 Exhibit 119, # 20 Exhibit 120, # 21 Exhibit 121, # 22 Exhibit 122, # 23 Exhibit 123, # 24 Exhibit 124, # 25 Exhibit 125) (Davis, James) (Entered: 12/23/2021)

- 12/23/2021 80 STIPULATION *Secretary of State's Notice of Filing Defendant and Defendant-Intervenor's Stipulated Exhibits* by John H Merrill. filed by John H Merrill (Attachments: # 1 Exhibit 126, # 2 Exhibit 127, # 3 Exhibit 128, # 4 Exhibit 129, # 5 Exhibit 130, # 6 Exhibit 131, # 7 Exhibit 132, # 8 Exhibit 133, # 9 Exhibit 134, # 10 Exhibit 135, # 11 Exhibit 136, # 12 Exhibit 137, # 13 Exhibit 138, # 14 Exhibit 139, # 15 Exhibit 140, # 16 Exhibit 141, # 17 Exhibit 142, # 18 Exhibit 143, # 19 Exhibit 144, # 20 Exhibit 145, # 21 Exhibit 146, # 22 Exhibit 147, # 23 Exhibit 148, # 24 Exhibit 149, # 25 Exhibit 150) (Davis, James) (Entered: 12/23/2021)
- 12/23/2021 81 STIPULATION *Secretary of State's Notice of Filing Defendant and Defendant-Intervenor's Stipulated Exhibits* by John H Merrill. filed by John H Merrill (Attachments: # 1 Exhibit 151, # 2 Exhibit 152, # 3 Exhibit 153, # 4 Exhibit 154, # 5 Exhibit 155, # 6 Exhibit 156, # 7 Exhibit 157, # 8 Exhibit 158, # 9 Exhibit 159, # 10 Exhibit 160, # 11 Exhibit 161, # 12 Exhibit 162, # 13 Exhibit 163, # 14 Exhibit 164, # 15 Exhibit 165, # 16 Exhibit 166, # 17 Exhibit 167, # 18 Exhibit 168, # 19 Exhibit 169, # 20 Exhibit 170) (Davis, James) (Entered: 12/23/2021)

JA54

- 12/27/2021 82 NOTICE by John H Merrill re 57 Order,,,, of *Persons Participating in Hearing* (Davis, James) (Entered: 12/27/2021)
- 12/27/2021 83 NOTICE by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas of *Persons Participating in Hearing* (Khanna, Abha) (Entered: 12/27/2021)
- 12/27/2021 84 RESPONSE in Support re 56 MOTION for Preliminary Injunction filed by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5)(Khanna, Abha) (Entered: 12/27/2021)
- 12/28/2021 85 ORDER Regarding Screen-Sharing. All counsel and their staff will have the ability to share their screens during the preliminary injunction hearing. However, the court urges the parties to be mindful as they prepare for the hearing that (1) each member of the court will have ready access during the hearing to hard copies of all demonstratives and exhibits submitted by the parties, and (2) it is the court's

JA55

- preference to be able to see both the examining lawyer and the testifying witness while the witness is testifying about documents that are screen-shared. Signed by Judge Anna M Manasco on 12/28/2021. (FNC) (Entered: 12/28/2021)
- 12/30/2021 86 Unopposed MOTION to Amend/Correct *Witness List* by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas. (Khanna, Abha) (Entered: 12/30/2021)
- 12/30/2021 87 TEXT ORDER: Plaintiffs' Unopposed Motion to Amend Witness List, Doc. 86 , is GRANTED. Signed by Judge Anna M Manasco on 12/30/2021. (KMB) (Entered: 12/30/2021)
- 01/02/2022 88 Unopposed MOTION to Amend/Correct *Exhibit List* by John H Merrill. (Attachments: # 1 Exhibit D171)(Davis, James) (Entered: 01/02/2022)
- 01/02/2022 89 Defendants unopposed motion to amend exhibit list, Doc. 88 , is GRANTED. Signed by Judge Anna M Manasco on 01/02/2022. (TGC) (Entered: 01/02/2022)
- 01/03/2022 90 MOTION to Amend/Correct 73 Notice (Other), *Preliminary Injunction Exhibit List* by Marcus Caster,

JA56

Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas. (Attachments: # 1 Exhibit Voter Registration Form)(Rouco, Richard) (Entered: 01/03/2022)

- 01/03/2022 91 **ORDER:** Due to the current pandemic circumstances, the court has decided to make available to the public a livestream of the consolidated preliminary injunction hearing in this case. Any member of the press or interested citizen may obtain the information necessary to access the livestream by following the instructions that appear on the website for the Northern District of Alabama (<https://www.alnd.uscourts.gov/instructions-view-public-hearing>). The livestream also will be broadcast in the Jury Assembly Room of the Hugo Black Courthouse in Birmingham, Alabama, until further notice, per the courts prior orders. Signed by Judge Anna M Manasco on 1/3/2022. (DNW) (Entered: 01/03/2022)
- 01/03/2022 92 **TEXT ORDER:** Plaintiffs' unopposed motion to amend exhibit list, Doc. 90 , is **GRANTED**. Signed by Judge Anna M Manasco on 1/3/2022. (DNW) (Entered: 01/03/2022)

JA57

- 01/04/2022 Minute Entry for proceedings held before Judge Anna M Manasco: Motion Hearing held on 1/4/2022 re 56 MOTION for Preliminary Injunction. Hearing begins; verbal notice of presence; exhibits discussed and noted which were admitted and objected to; objected exhibits to be addressed at later time during the hearing; no opening statements; testimony taken of plff Singleton with direct and cross, witness excused; testimony of N. Davis, witness qualified as an expert as noted on the record; direct and cross; lunch break; resume; cont. examination of N. Davis; witness excused; testimony of plff Milligan, direct and cross, witness excused; testimony of Kosuke Imai, witness qualified as an expert as noted on the record; break; resume; break; resume; court adj to 1/5/2022 at 9:00 AM central time. (Court Reporter Christina Decker.) (FNC) (Entered: 01/04/2022)
- 01/05/2022 Minute Entry for proceedings held before Judge Anna M Manasco: Motion Hearing-DAY 2 - held on 1/5/2022 re 56 MOTION for Preliminary Injunction. Hearing begins; testimony of Kosuke Imai continued/redirect; witness excused; Ryan Williamson called; qualified as an expert as to this hearing, as stated

JA58

on the record; direct, cross and redirect; witness excused; Witness S. Dowdy called; direct and cross; lunch break; resume; cont. cross; redirect; witness excused; Section 2 claims begin; Caster Plff calls Expert William Cooper, court qualifies witness as expert, as stated on the record; cross; redirect; court questions for witness; witness excused as to Section 2 claims; Def direct of Cooper as to Singleton claims; no cross; witness excused; discussions of agenda for 1/6; court adj to 1/6/2022 at 9:00 AM central time. (Court Reporter Christina Decker.) (FNC) (Entered: 01/05/2022)

01/06/2022

Minute Entry for proceedings held before Judge Anna M Manasco: Motion Hearing-DAY 3 - held on 1/6/2022 re 56 MOTION for Preliminary Injunction. Hearing begins; discussions regarding schedule for today; Milligan plffs call Moon Duchin, witness qualified as an expert, as stated on the record; argument re: Exh M-48, taken under advisement; break; resume; objections addressed and o/r Exh M-48 received, as stated on the record; cross; break for lunch; resume; cross continues; redirect and recross, witness excused; Caster Plffs call Dr. Maxwell Palmer; court discusses scheduling issues; testimony

JA59

of Dr. Palmer begins; witness qualified witness as expert, as stated on the record; direct begins; cross; witness excused; discussions re: starting new witness and start time for 1/7/22; Def Merrill calls Tom Bryan - court qualifies witness as an expert, as stated on the record; direct begins; court adj until 1/7/2022 at 8:30 AM central time. (Court Reporter Christina Decker.) (FNC) (Entered: 01/06/2022)

01/07/2022 Minute Entry for proceedings held before Judge Anna M Manasco: Motion Hearing-DAY 4 - held on 1/7/2022 re 56 MOTION for Preliminary Injunction. Hearing begins; pre hearing discussions regarding due date of Findings of Facts and Conclusions of Law which is now due by Friday, Jan 14; direct of Tom Bryan cont; break; direct cont; cross by Caster; lunch break, cont cross by Caster; cross by Milligan; cross by Singleton; redirect by def Merrill; questions by the court; court adj until 1/10/2022 at 9:00 AM central time. (Court Reporter Christina Decker.) (FNC) (Entered: 01/07/2022)

01/08/2022 93 ORDER regarding public access to consolidated preliminary injunction hearing. Signed by Judge Anna M Manasco on 1/8/22. (KMB) (Entered: 01/08/2022)

JA60

- 01/10/2022 94 TEXT ORDER: The requirement that, [w]ithin five days of the completion of the preliminary injunction hearing, the parties shall file proposed findings of fact and conclusions of law for the courts consideration in the courts Scheduling Order for Preliminary Injunction Proceedings, Doc. 40 , is VACATED. That order remains in effect as to all other provisions contained therein. The parties are ORDERED to file proposed findings of fact and conclusions of law for the courts consideration by midnight Central Standard Time on Friday, January 14, 2022. Signed by Judge Anna M Manasco on 1/10/2022. (FNC) (Entered: 01/10/2022)
- 01/10/2022 95 NOTICE of Appearance by Christina M Rossi on behalf of Jim McClendon, Chris Pringle (Rossi, Christina) (Entered: 01/10/2022)
- 01/10/2022 Minute Entry for proceedings held before District Judge Anna M Manasco: Motion Hearing- DAY 5 - held on 1/10/2022 re 56 MOTION for Preliminary Injunction. Hearing begins; pre hearing discussions regarding Caster Exh 106 - parties to discuss what part of the exhibit to be admitted - court w/h ruling on admission of exhibit; time and need for closing arguments discussed;

JA61

Milligan calls Dr. Joseph Bagley; witness qualified as an expert, as stated on the record; direct; cross; redirect; lunch break; resume; court notifies parties plffs will have 90 mins total for closing - plffs can reserve some time for rebuttal and defs will have 90 mins total for closing; further discussions re: admission of def X17, arguments, court o/r objections as stated on the record; Milligan plffs call B. Liu; witness qualified as an expert, as stated on the record; direct begins; cross; redirect; court questions; witness excused; Caster Plff calls Benjamin Jones and direct begins; cross; witness excused; court adj until 1/11/2022 at 9:00 AM central time. (Court Reporter Christina Decker.) (FNC) (Entered: 01/10/2022)

01/11/2022

Minute Entry for proceedings held before District Judge Anna M Manasco: Motion Hearing- DAY 6 - held on 1/11/2022 re 56 MOTION for Preliminary Injunction. Hearing begins; discussions regarding order of witnesses; Def calls Dr. Trey Hood; court certifies witness as an expert, as stated on the record; direct by State; cross by Milligan; cross by Caster; cross by Singleton; redirect; witness excused; lunch break; resume; Caster calls Dr.

JA62

Bridgett King; court qualifies witness as an expert, as stated on the record; direct begins; cross by state; state moves to admit DX 158; argument; court reserves ruling; state moves to admit DX 153; argument; court reserves ruling; redirect; witness excused; Caster calls Dr. Marcus Caster; direct; cross by state; witness excused; court adj until 1/12/2022 at 8:30 AM central time. (Court Reporter Christina Decker.) (FNC) (Entered: 01/11/2022)

01/12/2022

Minute Entry for proceedings held before District Judge Anna M Manasco : Motion Hearing- DAY 7 - held on 1/12/2022 re 56 MOTION for Preliminary Injunction. Hearing begins; State calls Bradley Byrne; direct; cross by Milligan; cross by Caster; cross by Singleton; redirect; court questions; witness excused; presentation of evidence is closed; no rebuttal; objected exhibits addressed as stated on the record; lunch; Singleton close, court questions; Caster close, court questions; Milligan close, court questions; Merrill close, court questions; rebuttal by Singleton, Milligan and Caster; court addresses the parties; questions by the court; hearing adj. (Court Reporter Christina Decker.) (FNC) (Entered: 01/12/2022)

JA63

- 01/14/2022 96 Statement of Facts *Proposed Findings of Fact and Conclusions of Law* by John H Merrill. filed by John H Merrill (LaCour, Edmund) (Entered: 01/14/2022)
- 01/14/2022 97 Statement of Facts *Proposed Findings of Fact and Conclusions of Law* by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas. filed by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas (Khanna, Abha) (Entered: 01/14/2022)
- 01/16/2022 98 NOTICE by John H Merrill re 96 Statement of Facts *Tables of Authorities for Defs' Proposed Findings of Fact and Conclusions of Law* (LaCour, Edmund) (Entered: 01/16/2022)
- 01/18/2022 99 Transcript of Proceedings
NOTICE: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90

JA64

calendar days. (A copy can be obtained at <http://www.alnd.uscourts.gov/local/court%20fonns/transcripts/Transcript%20Redaction%20Policy.pdf>) See Transcript Redaction Policy (Attachments: # 1 2, # 2 3, # 3 4, # 4 5, # 5 6, # 6 7) (DNW,) (Entered: 01/18/2022)

- 01/24/2022 100 **ORDER:** A status conference is set for **1:00 PM CENTRAL STANDARD TIME on WEDNESDAY, JANUARY 26, 2022**, by Zoom. The Zoom information will be provided to all parties at a later date. Signed by Judge Anna M Manasco on 1/24/2022. (DNW) (Entered: 01/24/2022)
- 01/24/2022 101 PRELIMINARY INJUNCTION, MEMORANDUM OPINION, AND ORDER. Signed by Judge Anna M Manasco on 1/24/2022. (KMB) (Entered: 01/24/2022)
- 01/25/2022 102 NOTICE OF APPEAL by John H Merrill. Filing fee \$ 505, receipt number 1126-4000310 (B4601118126). (LaCour, Edmund) Modified on 1/25/2022 (DNW,). (Entered: 01/25/2022)
- 01/25/2022 103 MOTION to Stay re 101 Order on Motion for Preliminary Injunction, 102 Notice of Appeal *Emergency Motion for Stay Pending Appeal* by John H Merrill. (LaCour, Edmund) (Entered: 01/25/2022)

JA65

- 01/25/2022 104 TEXT ORDER. Plaintiffs are DIRECTED to file their response to the Defendants' Emergency Motion for Stay Pending Appeal at or before 8:00 am Central Standard Time on January 26, 2022. Signed by Judge Anna M Manasco on 1/25/2022. (KMB) (Entered: 01/25/2022)
- 01/25/2022 105 NOTICE of Transmittal to the 11th Circuit. (DNW) (Entered: 01/25/2022)
- 01/25/2022 106 Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 102 Notice of Appeal (DNW) (Entered: 01/25/2022)
- 01/26/2022 107 Opposition to *Motion to Stay* filed by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas. (Rouco, Richard) (Entered: 01/26/2022)
- 01/26/2022 Minute Entry for proceedings held before Judge Anna M Manasco: Status Conference held on 1/26/2022. (Court Reporter Christina Decker.) (FNC) (Entered: 01/26/2022)
- 01/26/2022 108 TEXT ORDER. A Status Conference set for Friday, January 28, 2022 at 03:00 PM by Zoom before Circuit Judge Stan Marcus and District Judges Anna M Manasco

JA66

and Terry Moorer. The court will provide the zoom information to the parties by separate email. Signed by Judge Anna M Manasco on 1/26/2022. (FNC) (Entered: 01/26/2022)

- 01/26/2022 109 ORDER ON MOTION TO CLARIFY. Signed by Judge Anna M Manasco on 1/26/2022. (KMB) (Entered: 01/26/2022)
- 01/27/2022 110 ORDER DENYING DEFENDANTS' EMERGENCY MOTION FOR STAY PENDING APPEAL. Signed by Judge Anna M Manasco on 1/27/2022. (KMB) (Entered: 01/27/2022)
- 01/28/2022 111 NOTICE by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas *Proposed Remedial Process* (Rouco, Richard) (Entered: 01/28/2022)
- 01/28/2022 112 NOTICE by Jim McClendon, John H Merrill, Chris Pringle *Notice Regarding Defendants' Position on Issues Raised By the Court* (Davis, James) (Entered: 01/28/2022)
- 01/28/2022 Minute Entry for proceedings held before Judge Anna M Manasco: Status Conference held on 1/28/2022. (Court Reporter Christina Decker.) (FNC) (Entered: 01/28/2022)

JA67

- 01/28/2022 113 TEXT ORDER. Status Conference set for Wednesday, February 2, 2022 at 02:00 PM by Zoom before Circuit Judge Stan Marcus and District Judges Anna M Manasco and Terry Moorer. The court will provide the zoom information to the parties by email. Signed by Judge Anna M Manasco on 1/28/2022. (FNC) (Entered: 01/28/2022)
- 02/01/2022 114 Exhibit List of Plaintiff Caster from PI Hearing, held January 4, 2022 through January 12, 2022. Exhibits 1 through 103 efiled prior to the PI Hearing and can be found in Doc. 75 . Docs 104, 105 and 106 admitted during the PI hearing, are attached. (Attachments: # 1 Plff Exh 104, # 2 Plff Exh 105, # 3 Plff Exh 106)(FNC) (Entered: 02/01/2022)
- 02/01/2022 115 Exhibit List for def Merrill from PI Hearing, held January 4, 2022 through January 12, 2022. Exhibits e-filed prior to the PI Hearing and can be found at Docs. 76 (Exhibits 1-40); 77 (Exhibits 41-80); 78 Exhibits 81-100; 79 Exhibits 101-125; 80 (Exhibits 126-150) and 81 (Exhibits 151-170). Exhibit 171 admitted during the PI hearing is attached. (Attachments: # 1 Def Exh 171)(FNC) (Entered: 02/01/2022)

JA68

- 02/01/2022 116 RESPONSE to *Court Inquiry for Remedial Proceedings* filed by Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, Wendell Thomas. (Rouco, Richard) (Entered: 02/01/2022)
- 02/01/2022 117 NOTICE by John H Merrill (*Notice Regarding Defendants' Position on Issues Raised by the Court*) (Davis, James) (Entered: 02/01/2022)
- 02/02/2022 118 TEXT ORDER. The Status Conference set for 2:00 PM, this date, is CANCELLED. Signed by Judge Anna M Manasco on 2/2/2022. (FNC) (Entered: 02/02/2022)
- 02/03/2022 119 **ORDER:**The parties are **ADVISED** that if the Legislature is unable to enact a new map as of February 7, 2022, the court intends to draw on its inherent authority and, pursuant to Federal Rule of Civil Procedure 53, to issue a detailed order appointing Mr. Allen as Special Master and retaining Dr. Persily as an expert cartographer, with instructions (1) not to incur costs until February 8, 2022 and, thereafter (2) to consult all parties about the parties proposals for drawing a remedial map and to obtain the supporting data at the earliest opportunity after that date.

JA69

Signed by Judge Anna M Manasco
on 2/3/2022. (DNW,) (Entered:
02/03/2022)

02/07/2022 120 Order of the court appointing
Special Master and expert cartog-
rapher, and providing instructions
to parties. Signed by Judge Anna
M Manasco on 2/7/2022. (KMB)
(Entered: 02/07/2022)

JA70

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

EVAN MILLIGAN, SHALELA
DOWDY, LETETIA JACKSON,
KHADIDAH STONE, ADIA
WINFREY, GREATER
BIRMINGHAM MINISTRIES,
and the ALABAMA STATE
CONFERENCE OF THE NAACP,

Plaintiffs,

vs.

JOHN H. MERRILL, in his official
capacity as Secretary of State of
Alabama, and JIM MCCLENDON
and CHRIS PRINGLE, in their
official capacities as Co-Chairs of
the Alabama Permanent
Legislative Committee on
Reapportionment,

Defendants.

**COMPLAINT
THREE-JUDGE
PANEL
REQUESTED**

1. Plaintiffs Evan Milligan, Shalela Dowdy, Letetia Jackson, Khadidah Stone, Adia Winfrey, Greater Birmingham Ministries, and the Alabama State Conference of the NAACP bring this action to prohibit Defendants Secretary of State John H. Merrill and the Co-Chairs of the Alabama Permanent Legislative Committee on Reapportionment, Jim McClendon and Chris Pringle, from conducting elections under House

Bill 1 (2021 Second Special Session). H.B. 1, 2d Spec. Sess. (Ala. 2021).

2. House Bill 1 (“HB 1”) is the latest example of a decades long pattern of the white-controlled Alabama Legislature enacting congressional and state legislative districts that discriminate against Black voters to maintain power. Over the last fifty years, federal courts or the U.S. Department of Justice have repeatedly found that the state’s redistricting plans violate the rights of Black voters under the Voting Rights Act of 1965 (“VRA”) and the Fourteenth and Fifteenth Amendments to the United States Constitution.

3. Plaintiffs allege that HB 1 is the Legislature’s latest intentionally discriminatory scheme to pack and crack Black voters into Congressional districts in a manner that prevents the creation of a second majority-Black district. Plaintiffs further allege that this scheme is unconstitutional because race was the predominant motive in the drawing of the only majority-Black Congressional District (“CD”) 7 in a way that is not narrowly tailored to comply with Section 2 of the Voting Rights Act (“VRA”), 52 U.S.C. § 10301.

4. The consideration of race in drawing district lines may be permissible and necessary in many areas of Alabama to ensure compliance with Section 2 of the VRA. But Alabama’s consideration of race in the drawing of H.B. 1 was not narrowly tailored to comply with the VRA. Rather, HB 1 reflects the Legislature’s desire to use of race to maintain power by packing one-third

of Black Alabamians into CD 7 and cracking the remaining Black community.

5. Moreover, Alabamians were kept in the dark throughout the secretive map drawing process leading up to the introduction of HB 1. Only after the end of the public hearings and, at the eleventh hour, did the Legislature unveil congressional maps where race was the predominant factor in determining the district lines, not for any legitimate purpose, to prevent Black voters from having a fair opportunity to elect candidates of choice. The white-majority in the Legislature, including Rep. Pringle and Sen. McClendon, admitted that no racial-polarization analysis was conducted to determine whether the packing of CD 7 was necessary to satisfy the VRA. And the Legislature flatly rejected the requests from the Black community to conduct such an analysis or draw a second Black district. Indeed, the Legislature declined to share the map with Black legislators or the public before its introduction in the Legislative Committee on Reapportionment.

6. Because the Committee drew, and the Legislature enacted CDs 1, 2, 3, and 7 in HB 1 using race as a predominant factor in a manner that was not narrowly tailored to comply with Section 2 of the VRA or any other compelling governmental interest, these districts violate the Fourteenth Amendment to the United States Constitution and must be enjoined.

7. HB 1 denies Black Alabamians an equal opportunity to participate in the political process by packing one-third of Black Alabamians into CD 7 in

numbers unnecessary to assure them an equal opportunity to elect their preferred candidates. HB 1 also cracks the remaining Black population across CDs 1, 2, and 3 in a way that prevents them from having an opportunity to elect a representative of choice in a second congressional district.

8. Among other deviations from traditional redistricting principles, the districts in HB 1 splits Montgomery County and places voters from the majority-Black counties in the Black Belt¹ into majority-white Congressional districts in low enough numbers that Black voters have no electoral influence. The Legislature enacted this plan even though it could have more naturally drawn a second majority-Black Congressional District that complies with traditional redistricting principles, like maintaining whole counties, and respects the contiguity and communities of actual interest in the Black Belt counties.

9. The plan does so even though (1) voting-age Black Alabamians (“BVAP”)² are sufficiently numerous

¹ The Black Belt includes the core counties of Barbour, Bullock, Butler, Choctaw, Crenshaw, Dallas, Greene, Hale, Lowndes, Macon, Marengo, Montgomery, Perry, Pickens, Pike, Russell, Sumter, and Wilcox, as well as Clarke, Conecuh, Escambia, Monroe, and Washington counties. The Black Belt is named for the region’s fertile black soil. The region has a substantial Black population because of the many enslaved people brought there to work in the antebellum period. It has been a hotbed of racial discrimination and civil rights activism from the 1860s to today.

² “African American” or “Black” includes Hispanic Black people and people who are “Any Part Black,” i.e., persons who identify as Black or another race on the Census. The “Black Voting Age Population” includes all individuals who are 18 years of age

and geographically compact to be a majority of the voting-age population in two single member U.S. Congressional districts in Alabama; (2) the voting patterns of Black voters are politically cohesive; and (3) white voters in Alabama vote sufficiently as a bloc to typically defeat the candidates preferred by Black voters. Voting in Alabama has historically been and remains extremely racially polarized across the state—a fact of which numerous federal courts have taken notice. *See, e.g., Ala. Legis. Black Caucus v. Alabama* (“ALBC I”), 575 U.S. 254, 277 (2015).

10. Moreover, in the areas where a second majority-minority congressional district can and should be drawn, the white majority typically votes as a bloc to defeat Black voters’ preferred candidates. In the twentieth century, Black Alabamians have never elected a congressional representative in any district other than the packed majority-Black CD 7. And CD 7 has only been a majority-Black district since 1992. As a result, Black Alabamians have the opportunity to elect a candidate of choice in only 14% of the congressional delegation (1 of 7) despite making up over 27% of Alabama’s voting age population.

11. Alabama’s steadfast refusal to provide Black voters with adequate representation in Congress is a

or older and who identify as Any Part Black. In *Georgia v. Ashcroft*, 539 U.S. 461, 473 n.1 (2003), the U.S. Supreme Court declared that, where, as here, “the case involves an examination of only one minority group’s effective exercise of the electoral franchise . . . it is proper to look at all individuals who identify themselves as black.”

product of intentional discrimination and directly linked to the state's history and present conditions of discrimination against Black people. The state's intentional policy of disempowerment and discrimination has resulted in the denial of equal opportunity for Black people to participate in the political process in violation of the U.S. Constitution and the VRA. Under the totality of the circumstances, including, *inter alia*, Alabama's current practices and ongoing history of racial discrimination in voting, the continuing effect of racial discrimination on Black people in areas like education, employment, and health, continuing racial appeals by political candidates, and the Legislature's lack of responsiveness to the Black community, help to demonstrate that Black voters are being prevented from participating equally in the political process and electing candidates of choice.

12. Accordingly, HB 1 also violates Section 2 of the VRA and must be enjoined in favor of Plaintiffs' demonstrative plan (below in ¶ 88) or another remedial plan that completely cures the illegal vote dilution in HB 1 by establishing two majority-Black congressional districts.

JURISDICTION AND VENUE

13. This Court has jurisdiction to hear this case under 28 U.S.C. §§ 1331, 1343, and 1357 because the matters in controversy arise under the Constitution and laws of the United States, as well as under 42 U.S.C. §§ 1983 and 1988.

14. The Court has jurisdiction to grant declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

15. The Court has personal jurisdiction over the Defendants, who are all citizens of Alabama.

16. A three-judge panel is requested pursuant to 28 U.S.C. § 2284(a), as this action challenges “the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.”

17. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this district and because at least one Defendant resides in this district and all Defendants are Alabama residents.

PARTIES

18. Plaintiff Evan Milligan resides in Montgomery County, Alabama. He is a U.S. citizen and is a lawfully registered voter who resides in CD 7. As enacted in HB 1, the Legislature drew CD 7 as a majority-Black district. The Legislature used race as the predominant factor motivating its decisions to place a significant number of voters, like Mr. Milligan, within or outside of the district. CD 7 is not narrowly tailored to satisfy the VRA or any other compelling interest. HB 1 also packs Black voters like Mr. Milligan into CD 7 to prevent the creation of a second majority-Black congressional district and, thus, dilutes his vote in violation of

the VRA. Under the demonstrative plan, Mr. Milligan would reside in the remedial second majority-Black district.

19. Plaintiff Shalela Dowdy resides in Mobile County, Alabama. She is a U.S. citizen and is a lawfully registered voter who resides in CD 1. As enacted in HB 1, the Legislature drew CD 1 as a majority-white district. The Legislature used race as the predominant factor motivating its decisions to place a significant number of voters, like Ms. Dowdy, within or outside of the district. CD 1 is not narrowly tailored to satisfy the VRA or any other compelling interest. HB 1 also fragments Black voters like Ms. Dowdy to prevent the creation of a second majority-Black congressional district and, thus, dilutes her vote in violation of the VRA. Under the demonstrative plan, Ms. Dowdy would reside in the remedial second majority-Black district.

20. Plaintiff Letetia Jackson resides in the City of Dothan, Alabama. She is a U.S. citizen and is a lawfully registered voter who resides in CD 2. As enacted in HB 1, the Legislature drew CD 2 as a majority-white district. The Legislature used race as the predominant factor motivating its decisions to place a significant number of voters, like Ms. Jackson, within or outside of the district. CD 1 is not narrowly tailored to satisfy the VRA or any other compelling interest. HB 1 also cracks Black voters like Ms. Jackson to prevent the creation of a second majority-Black congressional district and, thus, dilutes her vote in violation of the VRA.

21. Plaintiff Khadidah Stone resides in Montgomery County, Alabama. She is a U.S. citizen and is a lawfully registered voter in CD 2. As enacted in HB 1, the Legislature drew CD 7 as a majority-Black district. The Legislature used race as the predominant factor motivating its decisions to place a significant number of voters, like Mr. Milligan, within or outside of the district. CD 7 is not narrowly tailored to satisfy the VRA or any other compelling interest. HB 1 also packs Black voters like Mr. Milligan into CD 7 to prevent the creation of a second majority-Black congressional district and, thus, dilutes his vote in violation of the VRA. Under the demonstrative plan, Mr. Milligan would reside in the remedial second majority-Black district.

22. Plaintiff Adia Winfrey resides in Talladega County, Alabama. She is a U.S. citizen and is a lawfully registered voter who resides in CD 3. As enacted in HB 1, the Legislature drew CD 3 as a majority-white district. The Legislature used race as the predominant factor motivating its decisions to place a significant number of voters, like Ms. Jackson, within or outside of the district. CD 3 is not narrowly tailored to satisfy the VRA or any other compelling interest. HB 1 also cracks Black voters like Ms. Winfrey to prevent the creation of a second majority-Black congressional district and, thus, dilutes her vote in violation of the VRA.

23. Greater Birmingham Ministries (“GBM”) was founded in 1969 in response to the challenges posed by the mid-twentieth century Civil Rights movement and its transformative impact in Birmingham, Alabama, and across the United States. GBM seeks to

address urgent human rights and social justice needs in the greater Birmingham area. GBM is a multi-faith, multiracial, non-profit membership organization that provides emergency services to people in need and engages people to build a strong, supportive, engaged community and a more just society for all people.

24. GBM is dedicated to advancing social justice through political participation across Alabama. GBM actively opposes state laws, policies, and practices that result in the exclusion of vulnerable groups or individuals from the democratic process. Toward that end, GBM regularly communicates with its members and works to register, educate, and increase voter turnout and efficacy, particularly among Black, Latinx, and low-income people and people with disabilities.

25. GBM has around 5,000 individual members located primarily throughout the greater Birmingham, Alabama area. GBM also has members in other areas of Alabama including Mobile, Tuscaloosa, Montgomery, and Madison Counties. Many GBM members are Black registered voters. GBM has members who are registered voters who live and vote in CDs 1, 2, 3, and 7. These members have been and, if HB 1 is not enjoined, will continue to be harmed by HB 1's assignment of them to unconstitutionally racially gerrymandered districts. Members of GBM include Black voters whose votes are unlawfully diluted by the packing of Black voters into CD 2 and the cracking of Black voters residing in CDs 1, 2, and 3 in violation of the VRA. Members of GBM include Black voters who would reside in a remedial second majority-Black district.

26. The Alabama State Conference of the N.A.A.C.P. (“Alabama NAACP”) is the state conference of the National Association for the Advancement of Colored People, Inc. The Alabama NAACP is the oldest and one of the most significant civil rights organizations in Alabama, and it works to ensure the political, educational, social, and economic equality of Black Americans and all other Americans. Two central goals of the Alabama NAACP are to eliminate racial discrimination in the democratic process, and to enforce federal laws and constitutional provisions securing voting rights. Toward those ends, the Alabama NAACP has participated in lawsuits to protect the right to vote, regularly engages in efforts to register and educate voters and encourages Black people to engage in the political process by turning out to vote on Election Day.

27. The Alabama NAACP has thousands of members in Jefferson County, the Black Belt and other counties across the state. Most of the members of the Alabama NAACP are Black registered voters. The Alabama NAACP’s members include registered voters who reside and vote in CDs 1, 2, 3, and 7. These members have been and, if HB 1 is not enjoined, will continue to be harmed by HB 1’s assignment of them to unconstitutionally racially gerrymandered districts. The Alabama NAACP’s members include Black registered voters whose votes are unlawfully diluted by the packing of Black voters into CD 2 and the cracking of Black voters in CDs 1, 2, and 3 in violation of the VRA. Members of the Alabama NAACP include Black

registered voters who would reside in a remedial second majority-Black district.

28. Defendant John H. Merrill is sued in his official capacity as Alabama Secretary of State. As Secretary of State, Defendant Merrill is the chief elections official in the State of Alabama. He must provide uniform guidance for election activities in the State and certify the elections of members to the Alabama Legislature and Congress. Ala. Code §§ 17-1-3, 17-12-21. Defendant Merrill also has responsibility for certifying the names of primary and general election candidates for the State Legislature and Congress, as well as issuing Certificates of Election following tabulation of vote results. Ala. Code §§ 17-13-5(b), 17-9-3(b), Ala. Code § 17-12-21.

29. Defendants Jim McClendon and Chris Pringle are sued in their official capacities as Co-Chairs of the Alabama Permanent Legislative Committee on Reapportionment (“the Committee”). Ala. Code § 29-2-51. In that capacity, Defendants McClendon and Pringle prepared and developed redistricting plans for the State following the decennial census and presided over the meetings of the Committee. The Committee was tasked with making a “continuous study of the reapportionment problems in Alabama seeking solutions thereto” and reporting its investigations, findings, and recommendations to the Legislature as necessary for the “preparation and formulation” of redistricting plans for the Senate, House, and congressional districts in the State of Alabama. Ala. Code §§ 29-2-51, 29-2-52. Defendants McClendon and Pringle led the

drawing of CDs 1, 2, 3 and 7. Defendants McClendon and Pringle will lead the Legislature's efforts to re-draw and remedy the congressional districts' illegality if ordered to do so by this Court.

STATEMENT OF FACTS

The History of Majority-Black Congressional District 7

30. The establishment of CD 7 as a majority-Black district in the 1990s redistricting cycle was the first time in the twentieth century that Black Alabamians had the opportunity to elect a candidate of choice to Congress.

31. In 1992, Black voters challenged the failure of the Legislature to redistrict after the release of the 1990 census and the lack of a majority-Black congressional district under Section 2 of the VRA. Upon the stipulation of the parties, a court ordered the creation of CD 7 as a majority-Black congressional district to comply with the VRA. *See Wesch v. Hunt*, 785 F. Supp. 1491, 1498 (S.D. Ala.), *aff'd sub nom. Camp v. Wesch*, 504 U.S. 902 (1992).

32. Because the Legislature failed to enact and preclear its own map, the court's plan remained in effect for the rest of the 1990s. After the 2000 and 2010 redistricting cycles, the Legislature continued to enact this version of CD 7 with changes only to address population shifts.

33. Even today, the core of CD 7 remains the same as it was drawn by the *Wesch* court.

34. In recent litigation, however, Alabama admitted that CD 7 “appears to be racially gerrymandered, with a finger sticking up from the black belt for the sole purpose of grabbing the black population of Jefferson County. Defendant does not believe that the law would permit Alabama to draw that district today if the finger into Jefferson County was for the predominate purpose of drawing African American voters into the district.” Secretary of State Merrill’s Pretrial Brief, *Chestnut v. Merrill*, No. 2:18-CV-00907 (N.D. Ala. Oct. 28, 2019), ECF No. 101 at 11.

35. Despite this admission, neither the State Legislature, nor Defendants took steps to remedy this racial gerrymander in the wake of the 2020 census. This racial gerrymandering was not narrowly tailored to comply with the VRA. Rather the Legislature simply continued to improperly use race to place Black voters into the existing supermajority Black CD 7, even though the Legislature knew it was possible to draw CD 7 as an effective majority-Black district without needlessly splitting political subdivisions, counties, and communities of actual shared interests.

**The Process Leading to
the Enactment of H.B. 1**

Joint Legislative Committee's
Stated Redistricting Criteria

36. On May 5, 2021, the Permanent Legislative Committee on Reapportionment (the “Committee”)—the Committee responsible for preparing and developing redistricting plans for the State following each decennial census—enacted guidelines for the 2021 redistricting cycle. The guidelines state that they are based on the requirements of the U.S. Constitution, Alabama Constitution, and policies that “are embedded in the political values, traditions, customs, and usages of the State of Alabama.”

37. The criteria for redistricting set by the Committee begin with requirements under the U.S. Constitution and federal law, including compliance with the one-person, one-vote requirement. The Committee instructed that Congressional districting maps “shall have minimal population deviation” and comply with Section 2 of the VRA, meaning that districts have “neither the purpose nor the effect of diluting minority voting strength.” The Committee further stated that districts cannot be drawn “in a manner that subordinates race-neutral districting criteria to considerations of race, color, or membership in a language minority group, except that race, color, or membership in a language-minority group may predominate over race-neutral districting criteria to comply with Section 2 of the Voting Rights Act, provided there is a strong

basis in evidence in support of such a race-based choice.”

38. Each district must also be “contiguous and reasonably compact,” under the criteria.

39. The criteria next require compliance with the Alabama Constitution, including that:

- a. Districts are “drawn to reflect the democratic will of all the people concerning how their governments should be restructured”;
- b. Districts are drawn based on total population except that voting-age population may be considered to comply with Section 2 of the VRA and other laws;
- c. The number of Senate districts is set at 35 and House districts at 105;
- d. All districts must be single-member districts; and
- e. All districts must be contiguous with each other.

40. The criteria further require compliance with redistricting policies that are “embedded in the political values, traditions, customs, and usages of the State of Alabama . . . to the extent that they do not violate or subordinate the foregoing policies prescribed by the Constitution and laws of the United States and of the State of Alabama,” including:

- a. Avoiding contests between incumbents where possible;

JA86

- b. Permitting contiguity by water but not point-to-point or long-lasso contiguity;
- c. Respect for “communities of interest, neighborhoods, and political subdivisions to the extent practicable,” with a community of interest “defined as an area with recognized similarities of interests, including but not limited to ethnic, racial, economic, tribal, social, geographic, or historical identities.”
- d. Minimization of the number of counties in each district; and
- e. Preservation of the cores of existing districts.

41. The Committee did not prioritize the criteria, except that “equality of population among districts and compliance with the Voting Rights Act of 1965” take priority when they conflict with other criteria.

The 2021 Legislative Process for Redistricting

42. On August 12, 2021, the U.S. Census Bureau released the results of the 2020 Census. Alabama’s population grew by 5.1% between 2010 and 2020. Alabama’s current population identifies as 63.1% non-Hispanic white, 26.9% as any part Black, 5.3% as Hispanic or Latino, 2.3% as any part American Indian/Alaska Native, and 2% as any part Asian. Communities of color drove population growth in the 2020 census. The Black population grew by 3.5%, the Hispanic/Latino population by 42.3%, the Asian-American population increased by 43.4%, and the white population shrunk by 1%. The population identifying as solely Native

American shrank as well, while the proportion of Alabamians identifying as multi-racial tripled.

43. Once census data was released, the Committee, under the leadership of Sen. McClendon and Rep. Pringle began to develop redistricting plans for congressional districts. *See* Ala. Code § 29-2-50(2).

44. The Committee consists of members of both the State House and Senate, with the Speaker of the House appointing one House member from each of the seven congressional districts and four additional House members and the Lieutenant Governor appointing one Senator from each of the seven congressional districts and four additional Senators. *See* Ala. Code § 29-2-51(c). The 2021 Reapportionment Committee includes 21 members-15 white Republicans and six Black Democrats.³

45. All Committee meetings must be open to the public and the Committee must provide a “[r]easonable opportunity” for members of the public to give comments and input regarding redistricting.

³ Ala. Legis., *Permanent Legislative Committee on Reapportionment*, <http://www.legislature.state.al.us/aliswww/ISD/JointIntCommResults.aspx?OIDCOMM=1300&COMMITTEE=PERMANENT%20LEGISLATIVE%20COMMITTEE%20ON%20REAPPORTIONMENT> (last visited Nov. 4, 2021). An additional Republican committee member left the Legislature in July 2021. *See* Eddie Burkhalter, *Governor appoints Rep. Bill Poole as state finance director*, Ala. Pol. Rep., July 16, 2021, <https://www.alreporter.com/2021/07/16/governor-appoints-rep-bill-poole-as-state-finance-director/>.

46. Between September 1 and 16, well before the Committee released any draft maps or proposals, the Legislative Reapportionment Office held 28 public hearings across the state. All but one hearing—held at 6:00 pm at the Statehouse in Montgomery—was held between the normal workday hours of 9:00 am to 5:00 pm, i.e., times when the general public was least able to attend.

47. Although Committee Co-Chair Sen. Jim McClendon claimed the public hearings served “to try to give the opportunity for any citizen to have input into the process,” before the public hearings even began, he told the press that the new maps would not cause “any surprises for the candidates or for the voters.” Mike Cason, *Alabama lawmakers begin task of drawing new political districts*, Ala. Media Group, Aug. 31, 2021, <https://www.al.com/news/2021/08/alabama-lawmakers-begin-task-of-drawing-new-political-districts.html>.

48. On October 19, 2021, Plaintiffs the Alabama NAACP and Greater Birmingham Ministries, and others sent a letter to the Alabama Permanent Committee on Reapportionment reminding them of their obligations under Section 2 of the VRA, highlighting the Committee’s obligation to conduct a racial-polarization analysis to ensure that the redistricting complied with the VRA and that the race was used only in a narrowly tailored manner to comply with a compelling state interest. Letter from LDF et al. to Ala. Legislative Reapportionment Office, Oct. 19, 2021,

<https://www.naacpldforg/wp-content/uploads/Letter-to-AL-ReapportionmentCommittee-20211019-1-1.pdf>.

49. Governor Kay Ivey called the Special Legislative Session on redistricting in Alabama to begin on October 28, 2021.

50. On October 26, 2021, the Committee held its first public meeting of this redistricting cycle. The proposed maps were not available to the public until the day before—October 25. A member of the Committee, Rep. Chris England, a Black legislator, published the proposed maps on Twitter. @RepEngland70, Twitter (Oct. 25, 2021, 12:30 p.m.), <https://twitter.com/RepEngland70/status/1452674045804167169>. The Committee itself did not release the maps to the public until the day of the Committee meeting, and many Committee members did not see the full proposed maps beyond their own districts and those surrounding their own district until the day before their meeting. Beyond the Committee, the Committee Co-Chairs and their staff met with each incumbent legislator or their staff either in person or online; individual legislators only viewed and provided feedback on draft maps of their districts, not maps of the entire state.

51. The Co-Chairs asserted that the Committee's lawyer, Dorman Walker, reviewed the maps and determined that they all complied with Section 2 of the VRA and the Fourteenth Amendment of the U.S. Constitution but did not explain what analysis had been undertaken. Mr. Walker has been the Committee's lawyer for 25 years, including when a federal court held that 12

districts were unconstitutional racial gerrymanders. Sen. McClendon explained that Mr. Walker told him that racial-polarization analysis was only done for state legislative districts—by an unnamed consultant in Georgia—where “it looked like there might possibly be a racial issue” rather than analyzing every district.

52. No racial-polarization analysis was conducted for CD 7—the single majority-minority Congressional district in the state. Rep. Pringle told the Committee that Mr. Walker said that a racial-polarization analysis was unnecessary because the district has a BVAP of around 54%, but did not explain the significance of that number, and when Rep. England asked Sen. McClendon to explain the relationship between a BVAP of 54% and the actual or potential results of a racial-polarization study, Sen. McClendon replied, “I got no clue.”

53. No racial-polarization analysis for any districts was provided to Committee members before or during the meeting. Committee members only received demographic and population data for each district and neither Mr. Walker nor the unnamed Georgia consultant attended the Committee meeting.

54. Rep. Laura Hall, a Black legislator, moved to postpone any vote on the proposed maps until the Committee members and the public had time to review the maps and accompanying racial-polarization analysis. That motion failed along racial lines—with all the Black committee members voting for it.

55. Each of the maps passed along racial lines out of Committee—with all the Black members of the Committee voting against the maps.

56. The Special Legislative Session for redistricting began a mere two days later, on October 28, 2021. Throughout the special session of the Legislature, the co-chairs of the Reapportionment Committee represented that the congressional districts were drafted by incumbent members of Alabama’s Congressional delegation to maintain their current districts with only those changes necessary to equalize populations.

57. On October 29, 2021, the Alabama House State Government Committee met to discuss the Reapportionment Committee’s proposed districting plan for Alabama’s U.S. House delegation. When asked what the process was for incorporating public comment into the proposed districting plans and whether a racial-polarization analysis had been conducted, Representative Chris Pringle said “no” and that “we’re working on it.”

58. Multiple times throughout the Committee meeting, Rep. Pringle noted that he had not seen full plans from outside groups, including the Alabama NAACP and Greater Birmingham Ministries. Yet, without specifying when an analysis would be complete or on what maps, Rep. Pringle also stated that he was “running analysis” on maps from outside groups.

59. Rep. John Rogers, a Black legislator, asked Rep. Pringle whether the Reapportionment Committee

considered questions from organizations such as the Alabama NAACP and Greater Birmingham Ministries, particularly as to District 7. Rep. Pringle replied that “we’re looking at everything.” But Rep. Pringle couched his statement by noting “it’s this horrific time crunch that we’re under,” and that he wished he “had more time to do this.”

60. Rep. Pringle again claimed that plans from outside groups were still being analyzed. He further admitted not knowing why there had not been a racial-polarization analysis of CD 7.

61. Rep. Pringle stated that he would “go back and look at the numbers” but proceeded to call a vote on the map anyway. The Committee gave the congressional map a favorable report.

62. Later in the Committee, Plaintiff Evan Milligan asked Rep. Pringle whether the Reapportionment Committee conducted racial polarization studies on any of the maps. Rep. Pringle replied that such studies were conducted on “some of the districts that we were concerned about,” but that they “were still working on it.” Again, Rep. Pringle offered no detail or timeline. And Rep. Pringle did not answer whether the Committee lacked the necessary data to determine whether the map violated federal law.

63. On November 1, the full House considered the congressional map. Rep. England asked again why no racial-polarization study had been done for CD 7, and asked about the status of the racial-polarization

study for CD 7 that he had requested in the Reapportionment Committee.

64. Rep. Pringle replied that a racial-polarization study was done only for districts “if we thought it was necessary.” In his view, only districts with a BVAP of 51% or less required a racial-polarization study. He did not state the legal or factual basis for this 51% or less rule.

65. Rep. Pringle again admitted to Rep. England that “they didn’t do” the racial-polarization study for CD 7, “not yet.” But Rep. Pringle assured him that “somebody” would do the analysis for that district.

66. Rep. England asked whether it was “by coincidence” that CD 7 happened to have a BVAP of around 55% when race was allegedly not taken into account during the initial drawing.

67. Rep. Pringle responded that they “attempt[ed] to maintain the core of the existing districts.” He noted that CD 7 originally was drawn in the early 1990s, “and we’ve maintained the core of that district ever since” despite significant population and demographic changes. Rep. Pringle specified that CD 7 was underpopulated by around 53,000 people. CD 7 had the most population to gain out of all the congressional districts.

68. Rep. England reiterated his concerns about keeping CD 7 largely the same throughout the decades: “The 7th congressional district manages to maintain somehow almost the exact shape that it has had

the last 20 years, but specifically the same sort of black voting age population” as the early 1990s, even when it needed to gain 53,000 people.

69. The House passed the congressional map by a vote of 65-38.

70. On November 2, 2021, the Senate General Fund and Appropriations Committee considered the State House and congressional maps.

71. The Committee gave both maps a favorable report in under twenty minutes. Sen. Allen remarked that the Reapportionment Committee consulted members of Congress and attorneys about the congressional map but did not speak to any State Senator. Another Senator suggested that the Senate “lean[s] too heavily” towards the subjective advice of attorneys “without really getting involved and understanding the rationale as to why” the maps were drawn as-is.

72. Regardless, the Committee gave the congressional map a favorable report.

73. The next day, November 3, the full Senate considered the congressional map.

74. Sen. Bobby Singleton, a Black legislator, asked Sen. McClendon whether anyone had considered maps that were proposed at public hearings months before—well before the 10-day rule for maps proposed by outside groups.

75. Sen. McClendon indicated that he had seen the map proposed by the League of Women Voters but

rejected it because of “serious flaws.” Specifically, he found the map flawed because it put two members of Congress within the same district. Sen. McClendon alleged that pitting the incumbents around each other would violate Section 2 of the Reapportionment Committee Guidelines, “which says contests between incumbents will be avoided whenever possible.”

76. Sen. McClendon also offered that the League of Women Voters map would violate Section 2 of the VRA by eliminating the sole majority-minority district in the state.

77. Sen. Singleton challenged Sen. McClendon on whether CD 7 is a racially gerrymandered district. Sen. McClendon replied “Gerrymandering is in the eye of the beholder.”

78. Sen. Rodger Smitherman, a Black legislator, offered a substitute whole-counties map, which he asserted was aimed at eliminating racial gerrymandering. This map included two districts with BVAP over 40%, but no majority-BVAP districts. Sen. Smitherman claimed that a racial-polarization analysis showed that these districts were Black “opportunity”-districts.⁴

79. Sen. McClendon objected to the Smitherman plan because Sen. McClendon maintained that it violated the VRA and because it placed two incumbent

⁴ In “opportunity” or “crossover” districts, the Black voters form a sizable enough minority to enable them, with help from some of the white majority in the district, to elect a candidate of choice. *Cooper v. Harris*, 137 S. Ct. 1455, 1472 (2017).

congressmembers—one Black and one white—in the same majority-Black CD 7. The Senate voted 23-7 along racial lines to reject the Smitherman plan—with all Black Senators voting in favor of the Smitherman plan.

80. Sen. Singleton also offered two substitute maps that, according to him, included two Black-opportunity congressional districts. These maps had only 2.6% and 0.7% deviation for District 7. He explained that, so long as a district provides voters with the opportunity to elect candidates of their choice, it was unnecessary for a district to have over 50% BVAP to comply with Section 2 of the VRA.

81. The Senate tabled consideration of both maps.

82. Sen. Kirk Hatcher, a Black legislator, offered the demonstrative map prepared by Plaintiffs Greater Birmingham Ministries and the Alabama NAACP as a substitute map. He stated that this map sought to ensure “that all Black Alabamians have an opportunity to elect their preferred congressional representatives.” Sen. Hatcher’s substitute map failed an up-or-down vote—with all Black legislators voting in favor of it.

83. Again, Sen. McClendon repeated that the congressional maps in HB 1 were drawn “race blind” even though the mapping software could display race. Sen. McClendon contended that the Supreme Court required “race blind” drawing of the congressional map after the 2010 Census. “The courts told us what we had to do, keeping in mind the whole time, this is a racial issue. This is not about splitting counties. And this is

not about splitting precincts. This is about drawing maps based on race. That's not good." He further alleged that, at this point in the redistricting process, it would be impermissible to consider race when altering the map.

84. The Senate tabled several other substitute maps.

85. The Senate then passed the congressional map by a vote of 22-7—along racial lines with all Black senators voting against the map.

**Plaintiffs Satisfy the Three *Gingles*
Preconditions for Proving a Vote Dilution
Claim under Section 2 of the Voting Rights Act**

*Gingles I: The Committee could have Drawn a
Second Majority-Black Congressional District with
a Reasonably Compact Black Population that is
Linked as a Community by Common Interests*

86. The Alabama's Black population is sufficiently large, geographically compact enough to constitute majorities of the voting age population in two congressional districts.

87. Per the demonstrative map in ¶ 89 below, CD 7 can be redrawn to include most of the City of Birmingham and the surrounding Black communities in Jefferson and southern Tuscaloosa Counties, all the majority-Black counties of Hale, Greene, Sumter, Perry, Dallas, most of majority-Black Marengo County, and portions of Choctaw, Autauga, Bibb, and Pickens

Counties with large Black populations. Demonstrative CD 7 would have a BVAP of 52.6%, which is sufficient for Black voters to elect a representative of choice despite the persistence of racially polarized voting in Alabama. This CD 7 is narrowly tailored to comply with the VRA.

88. Demonstrative CD 2 can be redrawn as a second majority-Black district to include all of majority-Black Montgomery County, rather than splitting it between districts, all of the surrounding majority-Black counties of Lowndes, Wilcox, and Bullock, and part of majority-Black Macon and Marengo Counties, all of the over-40% Black counties of Pike, Butler, Barbour, Conecuh, and Clarke, as well as the majority-Black City of Mobile. Demonstrative CD 2 would have a BVAP of 50.1%, which is sufficient for Black voters to elect a representative of choice despite persistent racially polarized voting. This CD 2 is narrowly tailored to comply with the VRA.

89. The map below shows demonstrative CDs 2 and 7 as reasonably compact areas of Black voters with majorities in two Alabama congressional districts. The majority-Black CD 7 is colored teal, and the majority-Black CD 2 is colored orange. The map has zero population deviation, keeps most counties whole, and satisfies other redistricting criteria. Black voters in these districts are members of communities of interests with a shared history, political beliefs, cultural values, and economic interests. Their history includes a history of discrimination, and their shared beliefs include a

90. There are other ways to draw two majority-Black districts, however. For example, an alternative demonstrative CD 2 could be drawn as a second majority-Black district while adhering to all the state's re-districting criteria, like maintaining zero population deviation and whole counties. This CD 2 could include all of Montgomery County and the Black Belt counties in the western part of the state, while ceding Alabama's southernmost counties to CD 1.

*Gingles II: Voting Remains Racially
Polarized in Alabama Across the State*

91. Voting is racially polarized across the state. "The surest indication of race-conscious politics is a pattern of racially polarized voting." *United States v. Marengo Cnty. Comm'n*, 731 F.2d 1546, 1567 (11th Cir. 1984).

92. Numerous federal courts in Alabama have found that the state's elections are racially polarized. *See, e.g., Ala. State Conf. of NAACP v. Alabama*, No. 2:16-CV-731-WKW, 2020 WL 583803, at *17 (M.D. Ala. Feb. 5, 2020) (accepting the undisputed statistical evidence proving the existence of racially polarized voting statewide); *Jones v. Jefferson Cty. Bd. of Educ.*, No. 2:19-cv-01821-MHH, 2019 WL 7500528, at *2 (N.D. Ala. Dec. 16, 2019) (concluding that "voting is racially polarized in the multimember district [of the Jefferson County school board] insofar as Black voters are politically cohesive and White people vote sufficiently as a bloc to enable them to defeat Black voters'

preferred candidates.”); *United States v. McGregor*, 824 F. Supp. 2d 1339, 1345-46 & n.3 (M.D. Ala. 2011) (finding that voting is racially polarized across Alabama); see also *ALBC I*, 575 U.S. at 277 (noting the existence of racially polarized voting in Alabama elections). “In an environment characterized by racially polarized voting, politicians can predictably manipulate elections—either by drawing districts or setting an issue for a referendum—to minimize or cancel out minority voters’ ability to elect their preferred candidates.” *McGregor*, 824 F. Supp. 2d at 1346 (internal citation, quotation marks, and alterations omitted).

93. There is a causal relationship between racial bloc voting and the state’s history of racial discrimination. “Racial bloc voting by whites is attributable in part to past discrimination, and the past history of segregation and discrimination affects the choices of voters at the polls.” *Brown v. Bd. of School Comm’rs of Mobile City*, 542 F. Supp. 1078, 1094 (S.D. Ala. 1982), *aff’d* 702 F.2d 1103 (11th Cir. 1983), *aff’d* 464 U.S. 1005 (1983).

94. In 2013 and 2014, Burton LeFlore, a Black Democrat, sought election to the U.S. House from CD 1, but both times—as the candidate of choice for Black voters—LeFlore was defeated by Bradley Byrne, a white Republican, in wide margins that reflect the significant racially polarized voting in Alabama.

95. In the 2008 U.S. Senate race, 90% of Black voters supported State Senator Vivian Figures, the Democratic candidate, while 89% of white voters voted

for Republican U.S. Senator Jeff Sessions. In that race, Senator Sessions won the support of a majority of white voters regardless of party affiliation: 58% of white Democrats, 88% of white Independents, and 96% of white Republicans. By contrast, Sen. Figures won the support of 84% of non-white voters of any party.

96. In 2018, Black candidates for Lieutenant Governor, State Auditor, and the Public Service Commission lost statewide general elections to white candidates wherein the Black candidates received upwards of 95% of Black voter support, and white candidates received upwards of 85% of white voter support.

97. Voting in primary elections in Alabama is also racially polarized. That is, even when voters are choosing among candidates from the same party race still influences their vote. For example, in the 2008 Democratic presidential primary, Black people overwhelmingly voted for Barack Obama, whereas most white voters supported Hillary Clinton or other white candidates.

Gingles III: White Block Voting
Typically Defeats Black Candidates of Choice

98. In the areas where a second majority-minority congressional district can and should be drawn, the white majority votes as a bloc typically resulting in the defeat of Black voters' candidates of choice. In the twentieth century, Black Alabamians have never elected a congressional representative of choice

outside of the majority-Black CD 7, and only since 1992. Thus, the lack of a second Black district restricts Black Alabamians influence to only approximately 14% of the congressional delegation, despite accounting for 27% of the state's population.

99. In congressional races in the current majority-white CDs 1, 2, and 3, Black candidates and Black favored candidates have never won election to Congress.

100. For example, in 2020 in District 1, white and white-preferred candidate Rep. Bradley Byrne defeated Black and Black-preferred candidate James Averhart by approximately 29 percentage points in a district that was approximately 25.7% BVAP. The same was true in 2018, with Rep. Byrne defeating Black and Black-preferred candidate Robert Kennedy Jr. by over 26 percentage points.

101. In 2020 in District 2, which is 30.6% BVAP, white and white-preferred candidate Rep. Barry Moore defeated Black and Black-preferred candidate Phyllis Harvey-Hall by over 30 percentage points. In 2018 in District two, white and white-preferred candidate Rep. Martha Roby defeated Black-preferred candidate Tabitha Isner by 23 percentage points.

102. In 2020 in District 3, which 25.8% BVAP, white and white-preferred candidate Rep. Mike Rogers defeated Black and Black-preferred candidate Adia Winfrey by 35 percentage points. Similarly, in 2018, Rep. Rogers defeated Black-preferred candidate Malory Hagan by over 27 percentage points.

**The Totality of the Circumstances,
Including Senate Factors Demonstrate that
HB 1 Violates Prevents Black Voters in
Alabama from Participating in the Political
Process on Equal Terms and Electing
Representatives of Choice**

103. The three *Gingles* requirements are necessary preconditions but, to establish liability, Plaintiffs must also demonstrate that “the totality of the circumstances results in an unequal opportunity for minority voters to participate in the political process and to elect representatives of their choosing as compared to other members of the electorate.” *Ga. State Conf of NAACP v. Fayette Cnty. Bd. of Comm’rs*, 775 F.3d 1336, 1342 (11th Cir. 2015).

104. Although district courts must perform this totality-of-the-circumstances analysis, “it will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances.” *Id.* (citation omitted).

105. To undertake the totality-of-the-circumstances determination, courts use the nine factors drawn from a report of the Senate Judiciary Committee accompanying the 1982 amendments to the VRA, i.e., the “Senate Factors.” *Id.* But courts are not limited to solely considering these factors, nor is there a requirement that “any particular number of factors be proved, or that a majority of them point one way or the

other.” *Id.* (internal citations and quotation marks omitted).

Senate Factor 1: Alabama has an Extensive
and Ongoing History of Voting Discrimination

106. In five of the six decennial redistricting cycles between 1960 to 2010, courts or the U.S. Department of Justice found that Alabama’s congressional map or state legislative maps discriminated against Black voters in violation of the Constitution or the VRA.

107. Prior to 1960, the Legislature failed to reapportion for 50 years—diluting the votes of residents in rapidly expanding counties. As a result, Alabama’s entire legislative apportionment scheme was struck down for violating the principle of one person, one vote. *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). On remand, a three judge court found that, in devising remedial maps to correct the malapportionment, the “Legislature intentionally aggregated predominantly Negro counties with predominantly white counties for the sole purpose of preventing the election of Negroes to [State] House membership.” *Sims v. Baggett*, 247 F. Supp. 96, 108-109 (M.D. Ala. 1965).

108. Following *Reynolds* and the 1970 Census, the Legislature again failed to redistrict and a three judge federal court was forced to draw new district lines. *Sims v. Amos*, 336 F. Supp. 924, 940 (M.D. Ala. 1972). The court rejected the Alabama Secretary of State’s proposed map because of its racially

“discriminatory effect” on Black voters. *Id.* at 936. In the 1980s, the United States Attorney General denied preclearance under the VRA to maps drawn by the Legislature to redistrict State House and Senate maps because of their discriminatory effect on Black voters in Jefferson County and the Black Belt. U.S. Dep’t of Justice Ltr. to Ala. Attorney General Graddick, May 6, 1982, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-1520.pdf>. Shortly thereafter, a three judge court rejected Alabama’s proposed interim remedial state maps in part because Alabama’s maps “had the effect of reducing the number of ‘safe’ black districts” in and near Jefferson County. *Burton v. Hobbie*, 543 F. Supp. 235, 238 (M.D. Ala. 1982).

109. After the 1990 census, the State entered a consent decree to resolve a VRA lawsuit filed on behalf of Black voters. *See Brooks v. Hobbie*, 631 So.2d 883, 884 (Ala. 1993).

110. Most recently, after the 2010 census, Black voters and legislators successfully challenged state legislative districts as unconstitutional racial gerrymanders. *See Ala. Legis. Black Caucus v. Alabama* (“ALBC II”), 231 F. Supp. 3d 1026, 1348-49 (M.D. Ala. 2017).

111. Alabama’s history of discrimination dates to the state’s admission to the union. Before the Civil War, Black people were barred from voting in the state. After the passage of the Reconstruction Acts and Amendments, Alabama was forced to allow Black men access to the franchise, and the 1867 Alabama

Constitution granted every male person over the age of 21—who satisfied the citizenship and residency requirements—the right to vote. This meant that for the first time in Alabama’s history, Black people voted and held public office.

112. In response, white leaders reformed the Democratic party with the intent of “redeeming” the State and re-establishing white supremacy. This was accomplished by using violence to deter Black people from political participation and, once the Redeemers returned to political office, to pass racially discriminatory laws to cement their control.

113. Between 1868 and 1872, the Ku Klux Klan maintained an active membership in Alabama’s rural areas and suppressed the Black vote by beating and killing Republican leaders, burning their homes, lynching Black Americans, and sending bands of armed white men on horseback to break up Republican political rallies and intimidate voters.

114. In 1874, Democratic candidates were elected to public office in large numbers, mainly due to the party’s use of violence against and intimidation of Black voters. On election day, in Eufaula, Alabama, members of a white paramilitary group known as the White League, killed several unarmed Black Republican voters and turned away thousands of voters from the polls.

115. The following year, in 1875, the Alabama legislature adopted a new state constitution and passed a series of local laws and ordinances designed

to strip Black Americans of the civil rights they enjoyed briefly during Reconstruction.

116. Violent intimidation of Black voters continued throughout the 1880s and 1890s, and by the twentieth century white leaders in Alabama had declared Black disenfranchisement a policy goal. At the 1901 Constitutional Convention, 155 white male delegates gathered in Montgomery with the express intention “to establish white supremacy in the State.”

117. The Convention ratified changes to the constitution that required literacy tests as a prerequisite to register to vote and mandated payment of an annual \$1.50 poll tax, which was intended to and had the effect of disenfranchising Black voters. *United States v. Alabama*, 252 F. Supp. 95, 99 (M.D. Ala. 1966).

118. After the passage of the 1901 Constitution, the number of Black registered voters in Alabama dropped from 180,000 to 3,000.

119. Alabama’s discriminatory voter registration system, combined with continued violent intimidation, successfully suppressed Black voting in the state for several more generations, with no significant federal intervention until the passage of the VRA in 1965.

120. In 1964 and 1965, Alabama’s discrimination and brutality against Black voters was on full display in Selma, where Dallas County Sheriff Jim Clark, Alabama state troopers, and vigilantes violently assaulted peaceful Black protesters attempting to gain access to the franchise.

121. On March 7, 1965, in what became known as Bloody Sunday, state troopers viciously attacked and brutally beat unarmed peaceful civil rights activists crossing the Edmund Pettus Bridge in Selma, where less than 5 percent of Black voters were registered to vote. Bloody Sunday helped pave the way for the passage of the VRA in 1965 and Alabama was declared a “covered” state under Section 4(b) of the Act.

122. Between 1965 and 2013, at least 100 voting changes proposed by Alabama state, county or city officials were either blocked or altered pursuant to Section 5 of the Voting Rights Act. U.S. Dep’t of Justice, Civil Rights Division, Voting Section, *Voting Determination Letters for Alabama*, <https://www.justice.gov/crt/voting-determination-letters-alabama> (last updated May 18, 2020). This includes at least 16 objections between 1969 and 2008 in cases where a proposed state or local redistricting plan had the purpose or would have the effect of diminishing the ability of Black voters to elect their candidates of choice. *Id.*; see 52 U.S.C. § 10304(b).

123. Beyond redistricting, Alabama has employed voting practices that impair Black electoral success. In 1986, for instance, a court found that the state laws requiring numbered posts for nearly every at-large voting system in Alabama had been intentionally enacted to dilute Black voting strength, and that numbered posts had the effect of diluting Black voting strength in at-large elections. *Dillard v. Crenshaw Cty.*, 640 F. Supp. 1347, 1357 (1986). The court also found that from the late 1800s to the 1980s, Alabama had

purposefully manipulated the method of electing local governments as needed to prevent Black citizens from electing their preferred candidates. *Id.*

124. Ultimately, a defendant class of 17 county commissions, 28 county school boards, and 144 municipalities were found to be employing at-large election systems designed and motivated by racial discrimination. These cases resulted in settlement agreements with about 180 Alabama jurisdictions that were required to adopt new election systems including single-member districts, limited voting, and cumulative voting systems, in an attempt to purge the state's election systems of intentional discrimination. *See James Blacksher, et. al., Voting Rights in Alabama: 1982-2006*, 17 S. Cal. Rev. L. & Soc. Just. 249, 264 (2008).

125. Federal courts have continued to rule against municipal at-large voting systems created by the State Legislature. *See, e.g., Jones*, 2019 WL 7500528, at *4 (finding that the at-large multimember district used to elect board members violated Section 2 of the VRA); *Ala. State Conf of the NAACP v. City of Pleasant Grove*, No. 2:18-cv-02056, 2019 WL 5172371, at *1 (N.D. Ala. Oct. 11, 2019) (ordering changes to the city's at-large voting system to remedy an alleged violation of the VRA).

126. Black voters have challenged other discriminatory Alabama voting laws under Section 2 of the VRA and the Constitution in federal court. *See, e.g., People First of Alabama v. Merrill* ("People First"), 491 F. Supp. 3d 1076, 1106-1107 (N.D. Ala. 2020).; *Harris v.*

Siegelman, 695 F. Supp. 517, 530 (M.D. Ala. 1988). For example, the Supreme Court struck down Alabama's discriminatory misdemeanor disfranchisement law, *Hunter v. Underwood*, 471 U.S. 222 (1985), and a state law permitting certain discriminatory annexations, *Pleasant Grove v. United States*, 479 U.S. 462, 466-67 (1987).

127. Even in the wake of *Shelby County v. Holder*, Alabama is the only state in the nation where federal courts have ordered more than one political subdivision to be re-subjected to preclearance review under Section 3(c) of the VRA. See *Jones*, 2019 WL 7500528, at *4-5; *Allen v. City of Evergreen*, No. 13-0107, 2014 WL 12607819, at *2 (S.D. Ala. Jan. 13, 2014).

Senate Factor 5: Black Alabamians Continue to Bear the Effects of Past Socioeconomic Discrimination which Hinders their Ability to Participate Effectively in the Political Process

128. Alabama has a long and well documented history of official and private discrimination which predates the state's admission to the union and has been well documented by the federal courts since at least the 1960s. As one federal court explained, Alabama's "unrelenting historical agenda, spanning from the late 1800s to [today], to keep its black citizens economically, socially, and politically downtrodden, from the cradle to the grave." *Dillard*, 640 F. Supp. at 1357.

129. As a result of the history of official and private discrimination in Alabama, Black Alabamians have a lower socioeconomic status and lag behind white residents in many crucial aspects of public life, including employment, income, educational attainment, and access to health care. Black Alabamians also disproportionately bear the brunt of the consequences of the state's criminal legal system. All of this discrimination and its vestiges hinder Black Alabamians' ability to effectively participate in the political process.

130. Alabama's history of denying Black people equal access to education persisted long after the Supreme Court's decision in *Brown v. Board of Education*. In 1956, after a federal court ordered the segregated University of Alabama to admit a Black woman named Autherine Lucy, white people gathered on campus, burned a cross, and marched through town chanting, "Hey, hey, ho, ho, Autherine has got to go!" Frye Gailard, *Cradle of Freedom: Alabama and the Movement that Changed America*, 40 (Tuscaloosa: University of Alabama Press, 2004).

131. Desegregation litigation continues in Alabama today. A December 2014 report found that 54 Alabama school districts remain under desegregation orders today as they still have not satisfied their constitutional obligations to integrate public schools and eliminate the vestiges of racial discrimination. *People First*, 491 F. Supp. 3d at 1108. For example, in 2018, in a case challenging the attempt by the City of Gardendale, which is 85% white, to form a school district separate from Jefferson County's more racially diverse

district, the Eleventh Circuit affirmed a finding that “race was a motivating factor” in the city’s effort. *Stout v. Jefferson Cnty. Bd. of Ed.*, 882 F.3d 988, 1007-1009 (11th Cir. 2018).

132. Alabama’s constitution still contains language that mandates separate schools for Black and white students after a majority of voters rejected repeal attempts in 2004 and 2012. Although the provision has not been enforceable for decades, its underlying prejudice continues to shape ongoing educational inequality.

133. Alabama was the first state ever to be subjected to a statewide injunction prohibiting the state from failing to disestablish its racially dual school system. *Lee v. Macon Cty. Bd. of Ed.*, 267 F. Supp. 458 (M.D. Ala.), *aff’d* 389 U.S. 215 (1967). The order resulted from the court’s finding that the State Board of Education, through Governor George Wallace, had previously wielded its powers to maintain segregation across the state. *Id.* For decades, state officials ignored their duties under the statewide desegregation order. *See Lee v. Lee Cnty. Bd. of Educ.*, 963 F. Supp. 1122, 1128-30 (M.D. Ala. 1997). The state did not satisfy its obligations to remedy the vestiges of segregation under this order until as late as 2007. *Lee v. Lee County Bd. of Educ.*, 476 F. Supp. 2d 1356 (M.D. Ala. 2007).

134. Alabama’s institutions of higher education similarly remain plagued by the “vestiges of segregation,” decades after Alabama colleges and universities were court-ordered to desegregate. *Knight v. Alabama*,

787 F. Supp. 1030 (N.D. Ala. 1991). In 1991, a trial court in *Knight v. Alabama* found that Alabama remained obligated to eliminate the lingering and continued effects of segregation and discrimination in the University of Alabama and Auburn University, as well as their proposed satellites, to try to recruit Black students to those schools and to recruit white students to the state's Historically Black Colleges and Universities (HBCUs). In 1995, the trial court issued a remedial decree analogous to the statewide injunction issued in *Lee v. Macon*, the implementation of which the court would oversee for over a decade. *Knight v. State of Ala.*, 900 F. Supp. 272 (N.D. Ala. 1995). And Alabama did not satisfy its obligations under the *Knight* order until as late as 2006. *Knight v. Alabama*, 469 F. Supp. 2d 1016 (N.D. Ala. 2006).

135. Today, after increasing for many years, Black student enrollment in the state's higher education institutions has drastically declined. For example, Black enrollment at Auburn University peaked 14 years ago with Black students making up 8.7 percent of the student body. This year, the number of Black students in the freshman class at Auburn was a mere 3.2%. Drake Pooley, *Why Has Black Enrollment Fallen at an Elite Southern University*, N.Y. Times (Sept. 17, 2021).

136. In 2016, all 76 of the schools labeled "failing" by Alabama were majority-Black schools and Black students constituted 91% of those Alabama students who were enrolled in "failing" public schools.

137. More than 16% of Black adults in Alabama over the age of 25 have not completed high school, compared to 11.4% of white adults. For the same age group, only 17.3% of Black Alabamians hold a bachelor's degree or a higher qualification, compared to 28.3% of white adults. U.S. Census Bureau, Table S0201, 1-year 2018 American Community Survey 2018.

138. Alabama also has a persistent history of denying its Black residents equal access to employment opportunities. More than one quarter (27.7%) of Black Alabamians live in poverty compared to only 11.3% of white Alabamians. *Id.*

139. The unemployment rate among Black people over the age of 16 in Alabama is more than double the rate among white residents of the same age. And of those adults who are employed, Black Alabamians are more likely to work in lower paying jobs than white workers: 20.7% of Black employees work in service occupations compared to 14.8% of whites. *Id.*

140. In Alabama, Black households also have fewer economic resources. The median household income for Black families is \$33,503 compared to \$58,257 for white households. *Id.*

141. Black Alabamians are significantly more likely to rent their home and to lack a vehicle than white Alabamians. About one in eight Black households (12.7%) lack access to a vehicle, while only 3.9% of white households lack a vehicle. *Id.* While 76.1% of white Alabamians are homeowners, only 49.9% of Black Alabamians own their homes. *Id.*

142. About 19% of Black households lack a computer, smartphone, or tablet versus only about 11% of white households. *Id.* Black families are also less likely to have broadband internet access-29.6% compared to 17.2% of white households. *Id.*

143. Rampant and overt discrimination in education works in tandem in Alabama with discrimination against Black people in employment. In 2019, there were 2,108 claims of employment discrimination submitted to the U.S. Equal Employment Opportunity Commission (“EEOC”) from Alabama, of which 45.1% were racially based—the highest percentage of any state in the United States. U.S. Equal Employment Opportunity Commission, 2019 EEOC Charge Receipts for AL, <https://www.eeoc.gov/statistics/enforcement/charges-by-state/AL>; United States Census Bureau, Quick Facts, <http://www.census.gov/quickfacts/table/PST045215/00,01>. Alabama’s race-based claims accounted for 2.9% of the racially based claims received by the EEOC in the entire country and Alabama’s color-based claims represented 2.2% of the EEOC’s color-based claims in the country, even though in 2010 Alabama accounted for only 1.7% of the national population.

144. Income and education are independently important, but both also have a significant impact on political participation rates, which remains persistently lower among Black than among white Alabamians.

145. Racial discrimination also finds expression in the healthcare system. Alabama has one of the highest maternal mortality rates in the country. In 2019, the infant mortality rate for Black infants was 12.0 deaths per 1,000 live births, which is more than twice the white infant mortality rate of 5.6 deaths. Ala. Public Health, *Alabama Infant Mortality Rate Shows Slight Uptick in 2019*, Dec. 16, 2020, <https://www.alabamapublichealth.gov/news/2020/12/16.html>. As a gynecologic oncologist in Mobile recently stated, “It is more lethal to be Black and pregnant in Alabama than in some poor countries.” Eyal Press, *A Preventable Cancer Is on the Rise in Alabama*, *The New Yorker* (Mar. 30, 2020), <https://www.newyorker.com/magazine/2020/04/06/a-preventable-cancer-is-on-the-rise-in-alabama>.

146. The life-expectancy of Black Alabamians (72.9 years) is significantly shorter than that of whites (76 years). In Alabama’s Black Belt, researchers have found that Black women, compared to white women, are more than twice as likely to die from cervical cancer. *Id.*

147. In Lowndes County, scientists at the National School of Tropical Medicine at Baylor College of Medicine documented higher rates of hookworm infections among residents from exposure to raw sewage and inadequate wastewater management. A disease long thought to have been eradicated in the United States, hookworm infections cause anemia, iron deficiencies, cognitive delay, and stunted growth in children. The peer-reviewed study published in the *American Journal of Tropical Medicine and Hygiene*

found that more than one in three Lowndes County residents tested positive for traces of hookworm. Equal Justice Initiative, *Researchers Find Hookworm Infection Linked to Extreme Poverty in Rural Alabama*, <https://eji.org/news/researchers-find-hookworm-infection-linked-extreme-poverty-rural-alabama/>.

148. On November 9, 2021, the U.S. Department of Justice announced an investigation into the wastewater disposal and infectious disease and outbreaks programs of the Alabama Department of Public Health and the Lowndes County Health Department. The investigation is examining whether the Alabama and Lowndes County Health Departments operate their onsite wastewater disposal program and infectious diseases and outbreaks program in a manner that discriminates against Black residents in violation of Title VI of the Civil Rights Act of 1964. *See* U.S. Dep't of Justice Office of Public Affairs, *Justice Department Announces Environmental Justice Investigation into Alabama Department of Public Health and Lowndes County Health Department* (last updated Nov. 9, 2021), <https://www.justice.gov/opa/pr/justice-department-announces-environmental-justice-investigation-alabama-department-public>.

149. The COVID-19 public health crisis that began in 2019 and the deaths associated with the novel and deadly respiratory virus have fallen most heavily on Black Alabamians as a result of centuries of discrimination against Black people in all manners of life in Alabama, including in health, income, and employment. Kesha Moore, COVID-19 Vaccinations In

Alabama: Protecting and Perpetuating a Racial Divide, NAACP Legal Defense Fund (Apr. 2, 2021), <https://www.naacpldf.org/naacp-publications/ldf-blog/covid-19-vaccinations-in-alabama-protecting-and-perpetuating-a-racial-divide/>. The continued effects of discrimination in Alabama are further evidenced by the fact that despite Black Alabamians having the highest rates of COVID-19 cases and disproportionately accounting for COVID-19 deaths. The COVID Tracking Project *Alabama: All Race & Ethnicity Data*, The Atlantic, <https://covidtracking.com/data/state/alabama/race-ethnicity> (last updated March 7, 2021).

Senate Factor 6: Overt and Subtle Racial Appeal's Continue in Political Campaigns

150. In the last decade, both overt and subtle racial appeals have defined political campaigns in Alabama. In 2011, at a town hall meeting, Alabama Congressman Mo Brooks stated that “[he] will do anything short of shooting them [undocumented immigrants]” to remove them from the United States.

151. In the 2017 special election for the U.S. senate seat vacated by Jeff Sessions, then-candidate Roy Moore told a group of people in Jackson, Alabama that the VRA created new rights and “today we’ve got a problem.” When asked to speak about a time when America was great, Moore replied, “I think it was great at the time when families were united—even though we had slavery—they cared for one another . . . Our families were strong, our country had direction.”

152. In the 2018 election for Chief Justice of the Alabama Supreme Court, at least two campaign ads run by Chief Justice Tom Parker were characterized by racial appeals. In one of his campaign ads, Chief Justice Parker, a white Republican, declared that he opposes “the leftist mob tr[ying] to destroy our society” and featured a clip of Congresswoman Maxine Waters. *Ala. State Conference of NAACP*, 2020 WL 583803, at *56. A court recently found that this statement alongside images of Congresswoman Waters, i.e., a Black congresswoman from California who had no reason to appear in an ad for an Alabama judicial election, shows that “one of the motives of the ad was to draw attention to race.” *Id.* In another of Justice Parker’s ads, he targeted immigrant communities: “It’s an invasion. What happens if they make it to Alabama?” *Id.* The ad then showed what appeared to be people of color trying to cross the southern border and concluded with a declaration that Justice Parker “stand[s] up for what we believe” and “stand[s] with us.” *Id.*

Senate Factor 7: Black Alabamians Remain
Woefully Underrepresented in Public Office

153. Black people in Alabama remain underrepresented, as a proportion of the population, in public office.

154. Even though Black people comprise approximately 27% of Alabama’s population, only one of seven or approximately 14% of Alabama’s congressional representatives is Black. This number of majority-Black

congressional districts has remained constant since 1992, before which there had never been a Black congressional representative from Alabama in the twentieth century.

155. None of the current statewide elected officials are Black. Only two Black people have ever been elected to statewide office. In both instances, the office was associate justice of the Alabama Supreme Court. In 1982 and 1988, the late Justice Oscar W. Adams, Jr. was elected to two consecutive terms; and, in 1994, Justice Ralph D. Cook won an unopposed statewide election. In 2000, both Justice Cook and the then-recently appointed Justice John England, a Black person, lost elections to white candidates.

156. As of 2015, there were 757 local Black elected officials in Alabama, making up only 16.7% of elected offices.

157. Alabama has never had a Black governor or Black senator representing the state in the U.S. Senate.

158. There are currently no Black Republicans in either the state House of Representatives or the state Senate or in any statewide elective positions.

Senate Factor 8: Elected Officials are
Unresponsive to the Needs of Black Alabamians

159. Black Alabamians' lack of representation in public office has contributed to the failure of elected officials to respond to the particularized needs of the

Black community. The Alabama Legislature rejected requests to expand Medicaid under the Affordable Care Act despite the racial gap in insurance coverage. Expanding Medicaid would have insured an additional 220,000 Alabamians, particularly benefiting Black residents. This disparity in healthcare and insurance coverage contributed to the vulnerability of Black Alabamians when the novel coronavirus surfaced in early 2020. *People First*, 491 F. Supp. 3d at 1109.

160. Black residents in Alabama have the highest rates of COVID-19 cases and deaths in the state. As the pandemic has progressed, racial disparities in COVID-19 vaccine access have also become clear. This is a result of both inefficiencies in vaccine distribution and deliberate choices by state and local administrators to overlook majority Black communities. Kesha Moore, *COVID-19 Vaccinations In Alabama: Protecting And Perpetuating A Racial Divide*, NAACP LEGAL DEF. & EDUC. FUND (Apr. 2, 2021), <https://www.naacpldf.org/naacp-publications/ldfblog/covid-19-vaccinations-in-alabama-protecting-and-perpetuating-a-racial-divide/>.

161. In Birmingham, the Alabama Regional Medical Services (ARMS) reported geographic discrepancies in the government's distribution of COVID-19 vaccines. The state distributed doses of the vaccine to affluent white suburbs as early as January 2021, while the ARMS, a health clinic that primarily serves a lower-income Black community in Birmingham, did not receive its first doses of COVID-19 vaccines until March 8, 2021.

162. Black Alabamians' lack of access to vaccinations was also observed in Mobile County, where 14 of the 18 state vaccination sites were located in neighborhoods with a larger white population.

163. Alabama's elected officials have also been unresponsive to the needs of Black Alabamians in other areas of government services. In 2014, following the Supreme Court's decision in *Shelby County v. Holder*, Alabama's photo identification law went into effect; and in 2015, the State announced that it was closing 31 of 75 driver license offices throughout Alabama. The planned closures overwhelmingly affected Black Alabamians, as the State specifically concentrated closures in the Black Belt. This decision was ultimately reversed as part of a settlement after the U.S. Department of Transportation determined that the closures had discriminated against Black people in violation of Title VI of the Civil Rights Act. *See* Mem. Agreement Between the U.S. Department of Transportation and the Alabama Law Enforcement Agency (Dec. 22, 2016), [https://www.transportation.gov/sites/dot.gov/files/docs/ALEAUSDOTSigned MOA_O.PDF](https://www.transportation.gov/sites/dot.gov/files/docs/ALEAUSDOTSigned%20MOA_O.PDF).

Congressional Districts 1, 2, 3, and 7 Are Racial Gerrymanders

164. Race was the predominant factor in drawing CDs 1, 2, 3, and 7, and the Legislature's use of race was not narrowly tailored to comply with the Section 2 of the VRA or any other compelling governmental interest. The Legislature subordinated traditional

race-neutral districting principles, including compactness, contiguity, respect for maintaining whole counties and communities of actual shared interest, to racial considerations.

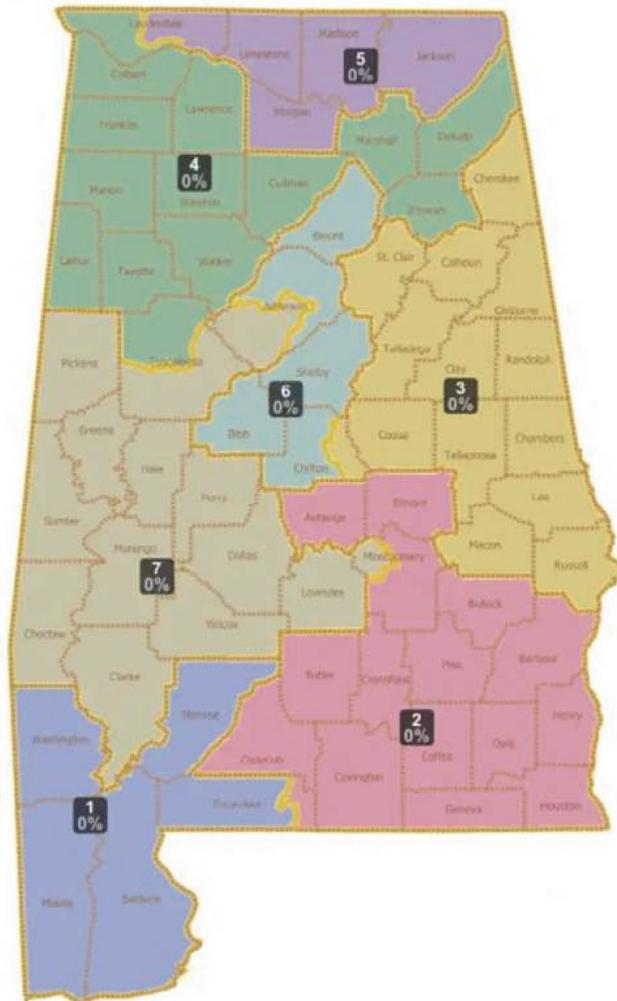
165. In the HB 1 plan signed by the Governor, the BVAP in CD 1 is 25.6%, the BVAP in CD 2 is 30.1%, and the BVAP in CD 3 is 25%. In drawing these districts, the Committee cracked Black voters between CDs 1, 2, and 3, despite having sufficient numbers and being geographically compact enough to form an additional majority-Black opportunity district. Race was the predominant factor in drawing these districts, as evident by how the boundaries cut through Black communities.

166. Under HB 1, for example, the City of Montgomery and Montgomery County, which has a Black population of 54.7%, are inexplicably split between CDs 2 and 7.

167. HB 1 bizarrely divides Black communities of shared interests residing in Alabama's Black Belt region into multiple congressional districts. The Black Belt is made up of those majority-BVAP (or near majority-BVAP) counties that run through central Alabama and have a centuries-long shared culture and history of slavery, agriculture, civil rights activism, and poverty. Yet, HB 1 neatly splits the Black population in the eastern Black Belt in two at the border of CDs 2 and 3 with Bullock and Barbour Counties in CD 2 and Macon and Russell Counties in CD 3.

JA125

168. CD 3 contains Macon County, which has a Black population of 82.6% and is home to the educational heart of the Black Belt: the historically Black college Tuskegee University. Clarke County in the Black Belt with its significant Black populations is in CD 7, whereas Conecuh County, another Black Belt County, is in CD 2.



169. While CDs 1, 2, and 3 use race as a predominant factor in drawing their boundaries by cracking the Black population across the three districts, CD 7 does so by unnecessarily packing Black voters into that district. CD 7 has existed in roughly its current form since 1992, when a federal court drew it as a majority Black district to resolve allegations of malapportionment and that Alabama had violated the VRA. As a result, for the first time since Reconstruction, Black voters in CD 7 were able to elect their candidate of choice—Earl F. Hilliard, a Black man—to Congress. Today, CD 7 is represented by Terri Sewell, a Black woman first elected there in 2010.

170. But the three judge court that drew CD 7 as a majority-Black district in 1992 expressly declined to conduct an analysis of racially polarized voting, the *Gingles* preconditions, or the totality of the circumstances in drawing CD 7 as a 65% or more majority-Black district. *Wesch*, 785 F. Supp. at 1498-99.

171. Moreover, when the Legislature attempted to draw its own 1992 congressional plan and submitted that plan for preclearance review, the U.S. Attorney General objected under Section 5 of the VRA. *See* U.S. Dep't of Justice Ltr. to Ala. Att'y General Evans, Mar. 27, 1992, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-1880.pdf>. Because Alabama failed to enact or preclear an alternative congressional plan, the *Wesch* court's plan remained in effect.

172. After the 2000 and 2010 censuses, the Legislature continued to draw CD 7 in a manner

consistent with the 1992 plan adopted by the *Wesch* court. As a result, CD 7 in the state's 2011 redistricting plan was still unnecessarily packed, with a BVAP of 63.57%. Alabama never conducted the analyses required by the VRA or the Constitution to determine whether maintaining the core of CD 7 or a Black population of 63% therein was necessary to comply with the VRA, nor did Alabama consider Black legislators' proposals in 2011 to draw a second Black district.

173. Today, the core of CD 7 remains the same as it was drawn in 1992. CD 7 includes Choctaw, Dallas, Greene, Hale, Lowndes, Marengo, Pickens, Perry, Sumter, and Wilcox counties, as well as portions of Clarke, Jefferson, Montgomery, and Tuscaloosa counties. The BVAP in CD 7 is 55.3%. The BVAP decline from the previous decade comes from population loss in the Black Belt, rather than any legislative efforts to address racial gerrymandering in CD 7.

174. In recent litigation, Alabama admitted that CD 7—which remains in similar form now as it did then—“appears to be racially gerrymandered, with a finger sticking up from the black belt for the sole purpose of grabbing the black population of Jefferson County. Defendant does not believe that the law would permit Alabama to draw that district today if the finger into Jefferson County was for the predominate purpose of drawing African American voters into the district.” Secretary of State Merrill's Pretrial Brief, *Chestnut v. Merrill*, No. 2:18-CV-00907-KOB (N.D. Ala. Oct. 28, 2019), ECF No. 101 at 11.

175. Based on expert simulations, which looked at factors like racial demographics, partisan voting patterns and analyzed various potential district combinations along racial and partisan lines, it is clear that race was a primary driver and the most significant factor in creating district lines. Expert simulations also show that CD 7 is more of an extreme racial outlier than a partisan outlier. That is, the simulations show that race accounts for the drawing of the lines in CD 7 above and beyond partisan voting patterns.

176. No compelling governmental interest, including compliance with Section 2 of the VRA, justifies the use of race to pack Black voters into CD 7 and to crack Black voters across CDs 1, 2, and 3. Under HB 1, the BVAP in CD 7 is 55.3%, which is still higher than necessary for Black voters to elect candidates of choice and appears to have been drawn with the mistaken legal belief that the BVAP and district boundaries should be altered as little as possible. Rep. Pringle further admitted that no racial-polarization or effectiveness analysis had been conducted by the Legislature regarding CD 7 or with respect to the redrawing of any redistricting plans. Instead, CD 7 was drawn by changing the previous version of the district, which Alabama admits was a racially gerrymander, as little as possible except to equalize populations. Thus, CD 7 is not narrowly tailored to comply with the VRA or any other compelling state interest.

**The Congressional Maps in HB 1 is the
Product of Intentional Racial Discrimination**

177. Prior to the 1990 census, Alabama never had a congressional district that allowed Black Alabamians any substantial influence and certainly not the ability to elect candidates of choice until litigation. As noted above in ¶ 31, VRA litigation brought by Black voters in the 1990 cycle resulted in the drawing of CD 7 as a majority-Black district. But the court that drew this majority-Black district did not conduct a Section 2 analysis. *Wesch*, 785 F. Supp. at 1498-99. Rather the court cited the parties' stipulation that it was possible to draw a Black district, *id.*, and, thereafter, adopted a legislative proposal for CD 7 drawn by State Sen. Larry Dixon. *Id.* at 1495.

178. The Legislature did enact a congressional redistricting plan with one majority-Black in 1992 during the *Wesch* litigation. But the *Wesch* court resolved to adopt its own plan and create a majority-Black CD 7 out of a concern that the state's plan would not be able to obtain the necessary VRA pre-clearance in time for the then-upcoming election deadlines. *Id.* at 1500.

179. The court was correct to worry about this timing. The U.S. Attorney General did in fact object under Section 5 of the VRA to the Legislature's 1992 Congressional plan. The Attorney General found that the legislative plan was the product of intentional racial discrimination because it drew only one majority-Black district and "fragmented" the rest of the Black

population across the state to dilute the Black vote. U.S. Dep't of Justice Ltr. to Ala. Att'y General Evans, Mar. 27, 1992, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-1880.pdf>. In the objection letter, the U.S. Attorney General noted a “concern” of the Black community that “an underlying principle of the Congressional redistricting was a predisposition on the part of the state political leadership to limit black voting potential to a single district.” *Id.* Thus, because the state did not enact or obtain preclearance for an alternate plan, the *Wesch* court’s plan remained in effect.

180. Troublingly, however, the *Wesch* court’s plan creating a majority-Black CD 7 was also potentially infected by the Legislature’s discriminatory motive. This is because the court plan was based on a CD 7 map drawn by Sen. Dixon. *Wesch*, 785 F. Supp. at 1495. And Sen. Dixon had a contemporaneous history of hostility towards Black voters. *See Greater Birmingham Ministries v. Sec’y of State of Ala.*, 992 F.3d 1299, 1306 (11th Cir. 2021) (quoting statements made by Sen. Dixon about Black voters in 1995, 2001, and 2010); *People First*, 491 F. Supp. 3d at 1106 (noting that, in the 1990s, Sen. Dixon had “insisted that only Black voters engaged in voter fraud”).

181. Following the Justice Department’s objection under Section 5 of the VRA to the discriminatory purpose embodied in the Legislature’s 1992 congressional plan, neither Alabama, nor any federal court ever acted to correct this discrimination. *See Wesch*, 6 F. 3d at 1468-69.

182. Rather, in the subsequent 2000 and 2010 redistricting cycles, the Legislature simply continued to reenact the same core district for CD 7 with only slight modifications to address population shifts. The Legislature did so with the same discriminatory motive of limiting Black electoral success to CD 7, while fragmenting the remainder of the BVAP in Alabama in a manner designed to protect white candidates. For instance, in the 2000 cycle, the Democratic-controlled Legislature packed CD 7, and cracked the remaining Black population into majority-white districts in a manner designed to bolster and protect white Democratic congressmen. In the 2010 cycle, the Republican Legislature continued to pack CD 7 while minimizing the number of Black voters residing in the other districts to favor white Republican candidates. Further, the 2010 congressional plan, which HB 1 is based on, was drawn by State Sen. Scott Beason who, like Sen. Dixon, has a history of discrimination. *See McGregor*, 824 F. Supp. 2d at 1344-48. Regardless of the party in power then, race—not partisanship—has driven Alabama’s congressional redistricting decisions.

183. The Legislature made these decisions despite requests from Black legislators and voters in each redistricting cycle since 1990 to unpack CD 7 and draw two Black-majority districts.

184. In 2021 cycle, the congressional maps in HB 1 likewise disregarded public input which supported the creation of a second Black opportunity district. The maps were introduced a mere day before they were passed out of committee on a vote that fell along racial

lines. In the State House, the majority party cut the floor debate on the congressional maps short and prevented the Legislative Black Caucus members from formally introducing Plaintiffs' letter and demonstrative plan containing two majority-Black districts (*supra* ¶ 89) into the House record for a formal vote. Nonetheless, the Black Caucus members were able to submit Plaintiffs' plan and letter containing a racial-polarization analysis into the clerk's official legislative record for the day.

185. In the Senate, Sen. Smitherman, Sen. Singleton, and Sen. Hatcher each presented three maps—including Plaintiffs' demonstrative map—that complied with the state's redistricting criteria and included either two majority-Black districts or two "opportunity" districts with BVAPs over 40%. Racial-polarization analyses showed that these maps would give Black voters the opportunity to elect candidates of choice. But the Legislature rejected these maps along racial lines.

186. Indeed, despite the submission of three maps proving otherwise, Sen. McClendon claimed that "It's impossible to draw two congressional districts that are majority minority people. You can't do it, try how you may, and so that's the problem. If you go for two districts, the way folks are just distributed in Alabama, you put the one pretty certain district at risk." Mike Cason, *Alabama lawmakers give final approval to new congressional districts*, Ala. Media Group, Nov. 3, 2021, <https://www.al.com/news/2021/11/>

[alabama-senate-rejects-plan-for-new-swing-congressional-district.html](#).

187. But, as noted above at ¶¶ 51-55, Sen. McClendon conducted no racial-polarization analysis, nor any other publicly released analysis to determine whether creating two majority-Black or Black-opportunity districts might “put the one pretty certain [CD 7] at risk.”

188. Even with the efforts of the Black Caucus, the congressional maps in HB 1 were passed out of the Legislature and then signed by the Governor a week afterwards with minimal debate, votes, or opportunity for public input on alternative maps containing two Black districts.

189. Despite its options, the Legislature simply continued to use race to maintain the core of the 1992 redistricting plan for CD 7, even though that plan was drawn for the discriminatory purpose of limiting Black voter influence. HB 1 packs CD 7 in a manner not required by the VRA and cracks the remaining Black community by placing majority-Black counties into multiple congressional districts in which Black voters are no more than 30% of the voting-age population.

CLAIMS FOR RELIEF

**Count One: Section 2 of the VRA, Vote Dilution
HB 1 violates Section 2 of the Voting Rights
Act of 1965 52 U.S.C. § 10301 (Vote Dilution)**

190. The relevant allegations contained in the preceding paragraphs are alleged as if fully set forth herein.

191. Voting in Alabama is racially polarized. Black voters in Alabama are politically cohesive and overwhelmingly support the same candidates in congressional and statewide elections. By contrast, the white majority usually votes as a bloc in congressional and statewide elections with the usual result of defeating Black voters' candidates of choice.

192. In addition, Black voters in Alabama are sufficiently numerous and geographically compact enough to form two majority-BVAP Congressional districts.

193. Moreover, considering the totality of the circumstances in Alabama, Plaintiffs, Black Alabamians and organizations of which they are a part, have less opportunity than other members of the Alabama electorate to participate in the political process and to elect representatives of their choice to Congress.

194. Among other factors, there is a long history and ongoing pattern of discrimination in voting, education, employment, health, and other areas in Alabama that effect Black voters ability to participate equally in the political process, Black voters are

underrepresented in the state's congressional delegation, recent political congressional and other campaigns have been characterized by overt and subtle racial appeals, the Legislature and white Congressmembers have been unresponsive to the particular concerns of Black voters, and the state's justifications for decades of cracking Black voters across districts and packing of Black voters into CD7 are tenuous.

195. These facts, as well as the particular circumstances surrounding the adoption of HB 1 by the Alabama legislature, demonstrate that the Legislature adopted the 2021 congressional redistricting plan with the intent and the result of diluting Black voter strength in violation of Section 2 of the VRA, 52 U.S.C. § 10301.

196. Plaintiffs have no adequate remedy at law other than the judicial relief sought in this case. The failure to temporarily and permanently enjoin the conduct of elections under HB 1 and order the creation of two majority-minority congressional districts in CD 1, 2, 3, and 7, will irreparably harm Plaintiffs by subjecting them to racial vote dilution.

**Count Two: Racial Gerrymandering HB 1
violates the Fourteenth Amendment to the
U.S. Constitution U.S. Const. amend. MV;
42 U.S.C. §1983**

197. The relevant allegations contained in the preceding paragraphs are alleged as if fully set forth herein.

198. The Fourteenth Amendment to the U.S. Constitution provides in relevant part: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 2.

199. Race was the predominant factor in the Alabama Legislature’s drawing and enactment of HB 1, creating and enacting CDs 1, 2, 3, and 7. The Legislature subordinated traditional race-neutral districting principles, including compactness, contiguity, respect for maintaining whole counties and communities of actual shared interest, to racial considerations.

200. The predominate consideration of race in the drawing of CD 1, 2, 3, 7 and the “cracking” and “packing” Black voters across those districts is not required to comply with the VRA and indeed prevents fulfillment of the VRA’s requirements. The predominate racial motive in the drawing of CD 1, 2, 3, 7 is not justified by a compelling state interest.

201. As a result, CDs 1, 2, 3, and 7 each violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

**Count Three: Intentional Discrimination HB 1
violates the Fourteenth Amendment to the
U.S. Constitution U.S. Const. amend. XIV;
42 U.S.C. §1983; 52 U.S.C. § 10301**

202. The relevant allegations contained in the preceding paragraphs are alleged as if fully set forth herein.

203. The equal protection clause of the Fourteenth Amendment to the U.S. Constitution forbids states from enacting laws that for which a racially discriminatory intent or purpose is a motivating factor and which produce discriminatory results. This includes laws that use race as a means to gain political or partisan advantage.

204. One of the motivating factors in the drawing and passage of HB 1 was a racially discriminatory purpose. Specifically, HB 1 was drafted and passed at least in part to minimize the political power of Black Alabamians by limiting their ability to influence congressional elections to a single district out of seven.

205. HB 1 will also produce discriminatory results for Black Alabamians—a fact Defendants were well aware of when drafting, passing, and beginning to implement the new congressional maps. Indeed, although Black Alabamians make up over 27% of the State's voting-age population, this provides them political influence in only one out of seven congressional districts, or approximately 14% of the districts in the State. It will also limit their influence to the specific region of the State containing CD 7 despite substantial

clusters of Black Alabamians living in concentrated areas of the State outside of CD 7. Defendants were aware that Black Alabamians could elect candidates of choice in two congressional districts in the state in a manner that complies with the U.S. Constitution and federal law, yet purposefully drew the congressional maps to prevent this.

206. Moreover, other circumstantial evidence supports discriminatory purpose as a motivating factor behind HB 1, including the Senate Factors outline above. For instance, Alabama has a well-documented and recent history of discriminating against Black Alabamians in districting, especially in congressional and state legislative redistricting.

207. Alabama never had a congressional district that allowed Black Alabamians any substantial influence and certainly not the ability to elect candidates of choice until litigation after the 1990 cycle resulted in the drawing of CD 7. As noted above at ¶ 180, that district was first drawn crafted by Sen. Dixon, who had a history of overt hostility towards Black voters in Alabama.

208. Moreover, even after the Justice Department objected to the 1990 congressional redistricting as the product of intentional racial discrimination, neither Alabama, nor any federal court ever acted to correct this discrimination. Rather, the Alabama Legislature simply continued to reenact the same packed CD 7 map in the 2000, 2010, and 2020 plans with only

slight modifications to address malapportionment, but the same racially discriminatory intent and results.

209. In 2021, the Legislature ignored the repeated requests from Black legislators and voters to unpack CD 7 and draw two Black-majority or opportunity districts. Accordingly, HB 1's congressional plan disregarded public input from the Black community, which supported creation of a second Black district; instead the plan protects white incumbents from running in a Black-majority or Black-opportunity district while limiting Black voters influence to CD 7; the plan was introduced a mere day before it was passed out of committee on a vote that fell along racial lines; and then was passed out of the Legislature and signed by the Governor the following week after minimal debate and opportunity for public input as to the alternative plans put forward by Black legislators and voters.

210. Plaintiffs have no adequate remedy at law other than the judicial relief sought in this case. The failure to temporarily and permanently enjoin the conduct of elections under HB 1 and ordering of a remedial map will irreparably harm Plaintiffs by subjecting them to racially discriminatory districts for the next decade.

PRAYER FOR RELIEF

211. WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Declare the challenged congressional districts adopted in HB 1 to be unconstitutional as violating the Fourteenth Amendment of the United States Constitution as racial gerrymanders and as passed with discriminatory intent as a motivating factor;
- B. Declare the congressional districting plan adopted in HB 1 a violation of Section 2 of the Voting Rights Act of 1965;
- C. Preliminarily and permanently enjoin the Defendants and their agents from holding elections in the congressional districts adopted in HB 1 and any adjoining districts necessary to remedy the constitutional violations including, if necessary, delaying the primary filing date until the Court adopts a remedial plan for 2022 elections and/or holding special elections;
- D. Order expedited hearings and briefing, consider evidence, and take any other action necessary for the Court to order a VRA-compliant plan for new congressional districts in Alabama.
- E. Set an immediate and reasonable deadline for the State of Alabama to adopt and enact a congressional redistricting plan that (1) includes two majority-minority districts, (2) does not dilute, cancel out, or minimize the voting strength of Black Alabamian voters or subject them to intentionally discriminatory districts, and (3) does not violate the VRA, federal and state constitutions, and other applicable laws;

- F. Award Plaintiffs' their costs, expenses, and disbursements, and reasonable attorneys' fees incurred in bring this pursuant to in accordance with 52 U.S.C. § 10310(e) and 42 U.S.C. § 1988;
- G. Retain jurisdiction over this matter until all Defendants have complied with all orders and mandates of this Court;
- H. Retain jurisdiction over this matter and require all Defendants to subject future congressional redistricting plans for preclearance review from this court or the U.S. Attorney General under Section 3(c) of the VRA, 52 U.S.C. § 10302(c);
- I. Grant such other and further relief as the Court may deem just and proper.

DATED this 15th day
of November 2021.

Respectfully submitted,

/s/ Deuel Ross
Deuel Ross*
NAACP LEGAL
DEFENSE &
EDUCATIONAL
FUND, INC.
700 14th Street N.W.
Ste. 600
Washington, DC 20005
(202) 682-1300
dross@naacpldf.org
Leah Aden*
Stuart Naifeh*
Kathryn Sadasivan^
(ASB-517-E48T)

/s/ Sidney M. Jackson
Sidney M. Jackson
(ASB-1462-K4OW)
Nicki Lawsen
(ASB-2602-COOK)
WIGGINS CHILDS
PANTAZIS FISHER &
GOLDFARB, LLC
301 19th Street North
Birmingham, AL 35203
Phone: (205) 341-0498
Fax: (205) 254-1500
sjackson@wigginschilds.com
nlawsen@wigginchilds.com

JA142

NAACP LEGAL
DEFENSE &
EDUCATIONAL
FUND, INC.
40 Rector Street,
5th Floor
New York, NY 10006
(212) 965-2200
laden@naacpldf.org
snaifeh@naacpldf.org
ksadasivan@naacpldf.org

Shelita M. Stewart*
Jessica L. Ellsworth*
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, D.C. 20004
(202) 637-5600
shelita.stewart@
hoganlovells.com

David Dunn*
HOGAN LOVELLS US LLP
390 Madison Avenue
New York, NY 10017
(212) 918-3000
david.dunn@
hoganlovells.com

Michael Turrill*
Harmony A. Gbe*
HOGAN LOVELLS US LLP
1999 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067
(310) 785-4600

/s/ Davin M Rosborough
Davin M. Rosborough*
Julie Ebenstein*
AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
125 Broad St.
New York, NY 10004
(212) 549-2500
drosborough@aclu.org
jebenstein@aclu.org

/s/ LaTisha Gotell Faulks
LaTisha Gotell Faulks
(ASB-1279-I63J)
Kaitlin Welborn*
AMERICAN CIVIL
LIBERTIES UNION
OF ALABAMA
P.O. Box 6179
Montgomery, AL 36106-0179
(334) 265-2754
tgfaulks@aclualabama.org
kwelborn@aclualabama.org

Blayne R. Thompson*
HOGAN LOVELLS US LLP
609 Main St., Suite 4200
Houston, TX 77002
(713) 632-1400
blayne.thompson@
hoganlovells.com

Attorneys for Plaintiffs

JA143

michael.turrill@
hoganlovells.com
harmony.gbe@
hoganlovells.com

Janette Louard*
Anthony Ashton*
Anna Kathryn Barnes*
NATIONAL ASSOCIATION
FOR THE ADVANCEMENT
OF COLORED PEOPLE
(NAACP)
4805 Mount Hope Drive
Baltimore, MD 21215
(410) 580-5777
jlouard@naacpnet.org
aashton@naacpnet.org
abarnes@naacpnet.org

***Attorneys for Plaintiff
Alabama State Conference of the NAACP***

* *Pro hac vice* motions forthcoming

^ Request for admission to the Northern District of
Alabama forthcoming

JA144

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

EVAN MILLIGAN, *et al.*,

Plaintiffs,

v.

JOHN H. MERRILL, *et al.*,

Defendant.

Case No.

2:21-cv-01530-AMM

**JOINT STIPULATED FACTS FOR
PRELIMINARY INJUNCTION PROCEEDINGS¹**

(Filed Dec. 7, 2021)

Pursuant to this Court's November 23 scheduling order, Doc. 40 at 10, the parties in the above captioned case submit the following joint statement of facts that are stipulated for purposes of preliminary injunction proceedings:

I. Plaintiffs

A. Evan Milligan

1. Plaintiff Evan Milligan is Black.
2. Plaintiff Evan Milligan resides in Montgomery County, Alabama.

¹ For all cases and court opinions cited herein, no party has agreed to stipulate to the accuracy of any court's prior factual findings, and all parties reserve the right to present evidence disputing such findings.

3. Plaintiff Evan Milligan is a U.S. citizen and a lawfully registered voter in Congressional District (“CD”) 7.

4. Under the Plaintiffs’ Demonstrative Plan in ¶ 88 of the Complaint, Plaintiff Milligan would reside in a second, new majority-Black district.

B. Shalela Dowdy

5. Plaintiff Shalela Dowdy is Black.

6. Plaintiff Shalela Dowdy resides in Mobile County, Alabama.

7. Plaintiff Shalela Dowdy is a U.S. citizen and a lawfully registered voter in CD 1.

8. Under the Plaintiffs’ Demonstrative Plan in ¶ 88 of the Complaint, Plaintiff Milligan would reside in a second, new majority-Black district.

C. Letetia Jackson

9. Plaintiff Letetia Jackson is Black.

10. Plaintiff Letetia Jackson resides in the City of Dothan, Alabama.

11. Plaintiff Letetia Jackson is a U.S. citizen and a lawfully registered voter in CD 2.

D. Khadidah Stone

12. Plaintiff Khadidah Stone is Black.

13. Plaintiff Khadidah Stone resides in Montgomery County, Alabama.

14. Plaintiff Khadidah Stone is a U.S. citizen and a lawfully registered voter in CD 2.

15. Under the Plaintiffs' Demonstrative Plan in ¶ 88 of the Complaint, Plaintiff Milligan would reside in a second, new majority-Black district.

E. Greater Birmingham Ministries (“GBM”)

16. Plaintiff GBM was founded in 1969 in response to the challenges posed by the mid-twentieth century Civil Rights movement and its transformative impact in Birmingham, Alabama, and across the United States. GBM describes itself as a multi-faith, multi-racial, non-profit membership organization that provides emergency services to people in need and engages people to build a strong, supportive, engaged community and a more just society for all people.

17. GBM describes itself as seeking to address urgent human rights and social justice needs in the greater Birmingham area. GBM describes itself as dedicated to advancing social justice through political participation across Alabama. GBM states that it actively opposes state laws, policies, and practices that it believes result in the exclusion of vulnerable groups or individuals from the democratic process.

18. GBM states that to accomplish its goals, it regularly communicates with its members and works to register, educate, and increase voter turnout and

efficacy, particularly among Black, Latinx, and low-income people and people with disabilities.

F. The Alabama State Conference of the N.A.A.C.P. (“Alabama NAACP”)

19. Plaintiff Alabama NAACP is the state conference of the National Association for the Advancement of Colored People, Inc. The Alabama NAACP is the oldest and considers itself one of the most significant civil rights organizations in Alabama, and it states that it works to ensure the political, educational, social, and economic equality of Black Americans and all other Americans.

20. The Alabama NAACP states that two of its central goals are to eliminate racial discrimination in the democratic process, and to enforce federal laws and constitutional provisions securing voting rights. The Alabama NAACP claims that it advances its goals in part by participating in lawsuits, and that it regularly engages in efforts to register and educate voters and encourages Black people to engage in the political process by turning out to vote on Election Day.

II. Defendants

A. John H. Merrill

21. Defendant John H. Merrill is the Alabama Secretary of State and the chief elections official in the State of Alabama. Secretary Merrill is sued in his official capacity.

22. Secretary Merrill provides uniform guidance for election activities in the State and certifies the elections of members to the Alabama Legislature and Congress. Ala. Code §§ 17-1-3, 17-12-21. Secretary Merrill also has responsibility for certifying the names of primary and general election candidates for the State Legislature and Congress, as well as issuing Certificates of Election following tabulation of vote results. Ala. Code §§ 17-13-5(b), 17-9-3(b), Ala. Code § 17-12-21.

B. Sen. Jim McClendon and Rep. Chris Pringle

23. Defendants Senator Jim McClendon and Representative Chris Pringle are Co-Chairs of the Alabama Permanent Legislative Committee on Reapportionment (“the Committee”). Ala. Code § 29-2-51. They are sued in their official capacity as co-chairs of the Committee.

24. In that capacity, Sen. McClendon and Rep. Pringle led the Committee that was responsible for the preparation and development of redistricting plans for the State following the decennial census and presided over the meetings of the Committee. The Committee was tasked with making a “continuous study of the reapportionment problems in Alabama seeking solutions thereto” and reporting its investigations, findings, and recommendations to the Legislature as necessary for the “preparation and formulation” of redistricting plans for the Senate, House, and congressional

districts in the State of Alabama. Ala. Code §§ 29-2-51, 29-2-52.

III. Demographics of Alabama

A. Citizenship and Age by Race/Ethnicity

25. Alabama's population shifts between every census.

26. Between the 2010 and 2020 census, Alabama's population increased from 4,779,736 to 5,024,279, a 5.1 percent increase.

IV. Alabama's Congressional Districts

27. From 1965 through 2013, Alabama was a covered jurisdiction under Section 5 of the Voting Rights Act, and Alabama's congressional plans therefore had to be precleared by the U.S. Department of Justice or a three judge federal court in Washington, D.C.

28. Since 1973, Alabama has had seven congressional seats. For each of the six congressional plans Alabama has had since the 1970 census, including the plan enacted in 2021, the plan has included all of Mobile, Baldwin, Washington, and Monroe Counties in CD 1. Likewise, in each plan, CD 2 has included all of Conecuh, Butler, Crenshaw, Covington, Pike, Bullock, Barbour, Coffee, Dale, Geneva, Henry, and Houston Counties; and CD 3 has included all of Calhoun, Cleburne, Talladega, Clay, Randolph, Tallapoosa, Chambers, Macon, Lee, and Russell Counties.

A. The History of the Majority-Black Congressional District 7

29. In 1992, Black voters and others challenged the failure of the State Legislature to redistrict congressional seats after the release of the 1990 census under the Fourteenth Amendment to the U.S. Constitution and the lack of a majority-Black congressional district under Section 2 of the Voting Rights Act.

30. On March 9, 1992, upon the stipulation of the parties, the three judge court ordered the creation of CD 7 as a majority-Black congressional district to resolve the litigation. *See Wesch v. Hunt*, 785 F. Supp. 1491, 1498 (S.D. Ala.), *aff'd sub nom. Camp v. Wesch*, 504 U.S. 902 (1992).

31. Concerning the parties to the case, the court noted as follows: “The Intervenor-Plaintiffs, Michael Figures and others, are African-American citizens of the United States and the State of Alabama. They have been allowed to intervene in this litigation both on their own behalf and on behalf of all African-American citizens of the State of Alabama.” *Id.* at 1494.

32. Under the 1992 Plan established by the *Wesch* court, Black people were 67.69% of the total residents of CD 7 and 63.58% of CD 7’s voting age population (“VAP”). 785 F. Supp. at 1496.

33. The *Wesch* court did not conduct a Section 2 analysis. *Id.* at 1498-99. Rather, the court cited the parties’ stipulation that it was possible to draw a

majority-Black VAP district, *id.*, and, thereafter, adopted a legislative proposal for CD 7. *Id.* at 1495.

34. Prior to the *Wesch* court establishing the 1992 Plan, however, the State Legislature did enact Act No. 92-65 (1992), a congressional redistricting plan with one majority-Black district.

35. The *Wesch* court adopted its own plan and created a majority-Black CD 7 due to a concern that Act No. 92-65 would not obtain the required preclearance under Section 5 of the Voting Rights Act in time for the then-upcoming election deadlines. 785 F. Supp. at 1500.

36. One of the plans submitted to the court had two majority-black districts. The court found: “The Hilliard Plan includes two majority African-American districts, with an African-American population of 59.33% and 61.98% respectively. Although this plan was submitted by the intervenors, they took the position that the Hilliard Plan probably provided obstacles of sufficient nature to cast doubt on their opportunity to elect candidates of their choice in these districts.” *Id.* at 1496.

37. Only two of the plans submitted by the parties achieved population equality, the “Pierce Plan” and the “Reed Plan,” each of which had a district that was more than 65% black population. *Id.* at 1495-96. According to the *Wesch* court, the Pierce Plan was a “modification of a plan called the ‘Larry Dixon Plan’ which was considered by the Reapportionment Committee.

The Pierce Plan modified the Larry Dixon Plan to some extent, but the basic format is similar.” *Id.* at 1495.

38. The court found that the Pierce Plan that was ultimately adopted was superior to the Reed Plan because “District 1 under the Reed Plan includes Mobile County to the south and Tuscaloosa County to the north. District 2 under the Pierce Plan is largely composed of counties in the southeast corner of the state, while the Reed Plan’s District 2 stretches from Mobile County, in the extreme southwest corner of the State, to Lee County, in east central Alabama. The Pierce Plan is superior to the Reed Plan in terms of compactness.” *Id.* at 1496.

39. The Court also found that the Reed Plan split more counties and precincts than the Pierce Plan and that the Pierce Plan did a better job of preserving the core of districts and communities of interest. *Id.* at 1496-97.

40. On March 27, 1992, the U.S. Attorney General objected to Act No. 9265 under Section 5 of the Voting Rights Act. The Attorney General found that Act No. 92-65 was the product of intentional racial discrimination because it drew only one majority-Black district and “fragmented” the rest of the Black population in the state to dilute the Black vote. In the objection letter, the U.S. Attorney General noted a “concern” of the Black community that “an underlying principle of the Congressional redistricting was a predisposition on the part of the state political leadership to limit black voting potential to a single district.”

41. During this time, the Department of Justice was applying a “max-black” policy.

42. Because the state did not obtain preclearance for Act No. 92-65 nor enact another plan, the *Wesch* court’s 1992 Plan remained in effect for the remainder of the 1990s.

43. In each redistricting cycle from at least the 1990 census through the 2020 census, some Black legislators and voters have lobbied for plans that include two Black-majority districts.

44. After the establishment of CD 7 as a majority-Black district in the 1992 Plan, Earl Hillard became the first Black Alabamian to be elected to Congress in the Twentieth Century.

45. After the 2000 redistricting cycle, the State Legislature enacted the 2002 Plan wherein Black people constituted 62.389% of the total population and 58.327% of the voting age population under the 2000 census.

46. The 2002 Plan received preclearance under Section 5 of the Voting Rights Act.

47. In the general congressional elections of 2002, 2004, 2006, and 2008, Artur Davis, a Black Democrat, was elected in CD 7 after winning a majority of Black voters.

48. In each of the general congressional elections of 2002, 2004, 2006, and 2008, Representative Davis won election with no less than 74.9% of the vote.

49. In the November 2010 general congressional election, Terri Sewell, a Black Democrat, was elected in CD 7 after winning a majority of Black voters.

50. In the November 2010 general congressional election, Representative Sewell won election in CD 7 with 72% of the vote, beating her white opponent by 45 points.

51. In 2010, CD 7 under the 2002 Plan had a Black voting-age population (“BVAP”) of 60.11%.

52. After the release of the 2010 census, the State Legislature enacted the 2011 Plan. The 2011 Plan increased the BVAP of CD 7 to 60.91% any-part Black and 60.55% single-race Black, according to 2010 Census data.

53. In September 2011, the Alabama Attorney General’s office sent a letter and related materials to the U.S. Department of Justice, which submitted the 2011 Plan for preclearance review under Section 5 of the Voting Rights Act (hereinafter, the “submission letter”).

54. The submission letter stated that the 2011 Plan “preserves the voting strength of the African-American community” and that the “percentage of total black and black voting age population in the new [2011] plan increased from the benchmark [2002 Plan] figures. That increase plainly cannot be regarded as retrogressive.”

55. The submission letter likened the CD 7 in the 2011 Plan to the CD 7 in the “1992 *Wesch* court plan

and the [2002] plan” because “the new [2011] plan has one African-American majority district, District 7, which is located in the west central part of the state.”

56. The submission letter did not include a racial polarization analysis or otherwise attempt to demonstrate that maintaining the effectiveness of CD 7 required increasing the total Black or BVAP population in that district.

57. The 2021 Plan enacted in HB 1 contains one majority-Black district with a BVAP of 55.3% any-part Black and 54.22% single-race Black under the 2020 census and assigns 30.86% of all single-race Black Alabamians to CD 7.

58. CD 7 remains the only majority-BVAP congressional district in Alabama.

59. In the 2021 Plan, the State Legislature sought to maintain the cores of each congressional district as they were drawn in the 2011 Plan.

60. The Black Belt is named for the region’s fertile black soil. The region has a substantial Black population because of the many enslaved people brought there to work in the antebellum period. All the counties in the Black Belt are majority- or near majority-BVAP.

61. The Black Belt includes the core counties of Barbour, Bullock, Butler, Choctaw, Crenshaw, Dallas, Greene, Hale, Lowndes, Macon, Marengo, Montgomery, Perry, Pickens, Pike, Russell, Sumter, and Wilcox. Clarke, Conecuh, Escambia, Monroe, and Washington

counties are sometimes included within the definition of the Black Belt.

62. In recent litigation, Secretary Merrill stated that CD 7 “appears to be racially gerrymandered, with a finger sticking up from the black belt for the sole purpose of grabbing the black population of Jefferson County. Defendant does not believe that the law would permit Alabama to draw that district today if the finger into Jefferson County was for the predominate purpose of drawing African American voters into the district.” Secretary of State Merrill’s Pretrial Brief, *Chestnut v. Merrill*, No. 2:18-CV-00907 (N.D. Ala. Oct. 28, 2019), ECF No. 101 at 11.

B. Congressional Districts 1, 2, and 3

63. In 2010, CDs 1, 2, and 3 under the 2001 Plan contained a combined AP Black population of 629,911, which was 92.3% of the ideal total population for a single congressional district, calculated by dividing the total population by the number of congressional districts. In 2010, CDs 1, 2, and 3 under the 2001 Plan contained a combined SR Black population of 615,896, which was 90.1% of the ideal total population for a single congressional district. This count includes Black voters in Mobile and Black voters in Anniston.

64. According to 2010 Census data, CDs 1, 2, and 3 under the 2011 Plan contained a combined any-part Black population of 575,923, which is 84.3% of the total population of an ideal congressional district. Those districts contained a combined single-race Black

population of 561,978, which is 82.3% of the total population of an ideal congressional district. This count includes Black voters in Mobile and Black voters in Anniston.

65. The 2001 Plan split Montgomery County among two districts: CDs 2 and 3. The 2011 Plan split Montgomery County between three congressional districts: CDs 2, 3, and 7. Under the 2021 Plan, Montgomery County is split between two districts: CDs 2 and 7.

C. State Board of Education (“SBOE”) Plan

66. The Alabama SBOE is a nine-member body that sets education policy for Alabama’s K-12 schools. The Governor serves as the president of the SBOE, and the remaining eight members are elected to the Board from single-member districts.

67. In 2021, Alabama adopted an eight-district SBOE Plan (the “2021 SBOE Plan”) with two majority-Black districts, Districts 4 and 5.

68. According to 2020 Census data, District 4 is 51% BVAP, and District 5 is 51% BVAP.

69. In each election since 2011, a Black Democrat won a majority of Black voters and the election in Districts 4 and 5 of the SBOE. District 5 of the SBOE Plan connects the City of Mobile to the Black Belt Counties.

V. The Process Leading to the Enactment of H.B. 1

A. Joint Legislative Committee’s Stated Redistricting Criteria

70. On May 5, 2021, the Permanent Legislative Committee on Reapportionment (the “Committee”)—the Committee responsible for preparing and developing redistricting plans for the State following each decennial census—enacted guidelines for the 2021 redistricting cycle.

71. The guidelines state that they are based on the requirements of the U.S. Constitution, Alabama Constitution, and policies that “are embedded in the political values, traditions, customs, and usages of the State of Alabama.”

72. The criteria for redistricting set by the Committee begin with requirements under the U.S. Constitution and federal law, including compliance with the one-person, one-vote requirement. The Committee instructed that Congressional districting maps “shall have minimal population deviation” and comply with Section 2 of the Voting Rights Act, meaning that districts have “neither the purpose nor the effect of diluting minority voting strength.”

73. The Committee stated that districts cannot be drawn “in a manner that subordinates race-neutral districting criteria to considerations of race, color, or membership in a language minority group, except that race, color, or membership in a language-minority

group may predominate over race-neutral districting criteria to comply with Section 2 of the Voting Rights Act, provided there is a strong basis in evidence in support of such a race-based choice.”

74. Each district must also be “contiguous and reasonably compact,” under the criteria.

75. The criteria next require compliance with the Alabama Constitution, including that:

- a. Districts are “drawn to reflect the democratic will of all the people concerning how their governments should be restructured”;
- b. Districts are drawn based on total population except that voting-age population may be considered to comply with Section 2 of the Voting Rights Act and other laws;
- c. The number of Senate districts is set at 35 and House districts at 105;
- d. All districts must be single-member districts; and
- e. All districts must be contiguous with each other.

76. The criteria require compliance with redistricting policies that are “embedded in the political values, traditions, customs, and usages of the State of Alabama . . . to the extent that they do not violate or subordinate the foregoing policies prescribed by the Constitution and laws of the United States and of the State of Alabama,” including:

JA160

- a. Avoiding contests between incumbents where possible;
- b. Permitting contiguity by water but not point-to-point or long-lasso contiguity;
- c. Respect for “communities of interest, neighborhoods, and political subdivisions to the extent practicable,” with a community of interest “defined as an area with recognized similarities of interests, including but not limited to ethnic, racial, economic, tribal, social, geographic, or historical identities.”
- d. Minimization of the number of counties in each district; and
- e. Preservation of the cores of existing districts.

77. The Committee’s Redistricting Guidelines stated that “In establishing legislative districts, the Reapportionment Committee shall give due consideration to all the criteria herein. However, priority is to be given to the compelling State interests requiring equality of population among districts and compliance with the Voting Rights Act of 1965, as amended, should the requirements of those criteria conflict with any other criteria.”

B. The 2021 Legislative Process for Redistricting

78. On August 12, 2021, the U.S. Census Bureau released the results of the 2020 Census.

79. Alabama's population grew by 5.1% between 2010 and 2020.

80. Using population estimates from the Census Bureau, the Committee, under the leadership of Sen. McClendon and Rep. Pringle, began to develop redistricting plans for congressional districts in May of 2021. *See* Ala. Code § 29-250(2). Once census data was released in August, that work continued.

81. The Committee consists of members of both the State House and Senate, with the Speaker of the House appointing one House member from each of the seven congressional districts and four additional House members and the Lieutenant Governor appointing one Senator from each of the seven congressional districts and four additional Senators. *See* Ala. Code § 29-2-51(c).

82. The 2021 Reapportionment Committee includes 21 members-15 white Republican members and six Black Democratic members.

83. All Committee meetings must be open to the public. The Committee Guidelines provide that "All interested persons are encouraged to appear before the Reapportionment Committee and to give their comments and input regarding legislative redistricting. Reasonable opportunity will be given to such persons, consistent with the criteria herein established, to present plans or amendments redistricting plans to the Reapportionment Committee, if desired, unless such plans or amendments fail to meet the minimal criteria herein established."

84. Between September 1 and 16, before the Committee released draft maps or proposals, the Legislative Reapportionment Office held 28 public hearings across the state.

85. Every hearing, except one that was held at 6:00 pm at the Statehouse in Montgomery, was held between the hours of 9:00 am to 5:00 pm.

86. On October 19, 2021, Plaintiffs the Alabama NAACP and Greater Birmingham Ministries and others sent a letter to the Alabama Permanent Committee on Reapportionment.

87. The letter sought to remind the Committee of obligations under Section 2 of the Voting Rights Act and highlighted what the Plaintiffs believed to be the Committee's obligation to conduct a racial-polarization analysis to ensure that the redistricting complied with the Voting Rights Act and that the race was used only in a narrowly tailored manner to comply with a compelling state interest.

88. Governor Kay Ivey called the Special Legislative Session on redistricting in Alabama to begin on October 28, 2021.

89. On October 26, 2021, the Committee held its second public meeting of this redistricting cycle. The first public meeting was held in May 2021, when the Committee adopted redistricting guidelines.

90. A member of the Committee, Rep. Chris England, a Black legislator, published the proposed maps on Twitter on October 25, 2021.

91. The Committee released the maps to the public on the day of the Committee meeting.

92. Many Committee members did not see the full proposed maps beyond their own districts and those surrounding their own district until the day before their meeting.

93. Beyond the Committee, the Committee Co-Chairs and their staff met with each incumbent legislator or their staff either in person or online unless the legislator declined to meet.

94. Individual legislators only viewed and provided feedback on draft maps of their districts and adjoining districts, not maps of the entire state.

95. Mr. Dorman Walker has been the Committee's lawyer for the 2011 and 2021 redistricting cycles.

96. Sen. McClendon explained that Mr. Walker told him that racial-polarization analysis was only done by Dr. M.V. "Trey" Hood III for state legislative districts where "it looked like there might possibly be a racial issue."

97. No racial-polarization analysis was conducted for CD 7.

98. No racial-polarization analysis for any districts was provided to Committee members before or during the meeting.

99. Committee members only received demographic and population data for each district.

100. Neither Mr. Walker nor Dr. Hood, who conducted racial-polarization analysis for the state legislative districts, attended the Committee meeting.

101. Rep. Laura Hall, a Black legislator, moved to postpone any vote on the proposed maps until the Committee members and the public had more time to review the maps and accompanying racial-polarization analysis.

102. All the Black Democratic committee members voted in favor of Rep. Hall's motion, which failed because nearly all white Republican committee members voted against it.

103. Each of the maps passed out of Committee.

104. All the Black Democratic members of the Committee voted against each of the maps.

105. The Special Legislative Session for redistricting began two days later, on October 28, 2021.

106. On October 29, 2021, the Alabama House State Government Committee met to discuss the Reapportionment Committee's proposed districting plan for Alabama's U.S. House delegation.

107. The Committee gave the congressional map a favorable report. All the Black Democratic members of the Committee voted against the maps.

108. On November 1, the full House considered the congressional map.

109. The House passed the congressional map by a vote of 65-38.

110. On November 2, 2021, the Senate General Fund and Appropriations Committee considered the State House and congressional maps.

111. The Committee gave both maps a favorable report. All the Black members of the Committee, each of whom is a Democrat, voted against the maps.

112. The next day, November 3, 2021, the full Senate considered the congressional map.

113. Sen. Kirk Hatcher, a Black legislator, offered the demonstrative map prepared by Plaintiffs Greater Birmingham Ministries and the Alabama NAACP as a substitute map. He stated that this map sought to ensure “that all Black Alabamians have an opportunity to elect their preferred congressional representatives.”

114. Sen. Hatcher’s substitute map failed an up-or-down vote. All Black Senators voted in favor of it.

115. The Senate tabled several other substitute maps.

116. The Senate passed the congressional map by a vote of 22-7.

117. All Black senators, each of whom is a Democrat, voted against the map.

VI. Other Stipulated Facts

118. Numerous federal courts in Alabama have found that the state's elections were racially polarized at the time and locations at issue in their respective cases. *See, e.g., Ala. State Conf. of NAACP v. Alabama*, No. 2:16-CV-731-WKW, 2020 WL 583803, at *17 (M.D. Ala. Feb. 5, 2020) (accepting the undisputed statistical evidence proving the existence of racially polarized voting statewide); *Jones v. Jefferson Cty. Bd. of Educ.*, No. 2:19-cv-01821-MHH, 2019 WL 7500528, at *2 (N.D. Ala. Dec. 16, 2019) (finding that voting is racially polarized in Jefferson County elections); *United States v. McGregor*, 824 F. Supp. 2d 1339, 1345-46 & n.3 (M.D. Ala. 2011) (finding that voting is racially polarized across Alabama).

119. In 2008, Bobby Bright, a white Democrat, was elected to the U.S. House from CD 2.

120. From 1973 until 2008, white Democrats were elected to the U.S. House from CD 5.

121. In the November 2008 election, Democrats won three of Alabama's seven Congressional districts. White Democrats won in Districts 2 and 5. In the same election, John McCain, a white Republican candidate for President, won a majority of the votes statewide and won the most votes in six of the seven Congressional districts, including Districts 2 and 5. Barack Obama, a Black Democrat, received a majority of votes only in District 7.

122. In 2013 and 2014, Burton LeFlore, a Black Democrat, ran for election to the U.S. House from CD 1, but both times LeFlore was defeated by Bradley Byrne, a white Republican, by wide margins.

123. In 2017, Doug Jones, a white Democrat, was elected to the U.S. Senate in Alabama.

124. In 2018, Black candidates for Lieutenant Governor, State Auditor, and the Public Service Commission lost statewide general elections to white candidates.

125. In the Twentieth century, Black Alabamians have never elected a Black person to Congress outside of the majority-Black CD 7, and only since 1992.

126. In congressional races in the current majority-white CDs 1, 2, and 3, Black candidates have never won election to Congress.

127. For example, in 2020 in District 1, white Republican candidate Rep. Bradley Byrne defeated Black Democratic candidate James Averhart by approximately 29 percentage points in a district that was approximately 25.7% BVAP. The same was true in 2018, with Rep. Byrne defeating Black and Black-preferred candidate Robert Kennedy Jr. by over 26 percentage points.

128. In 2020 in District 2, which is 30.6% BVAP, white Republican candidate Rep. Barry Moore defeated Black Democratic candidate Phyllis Harvey-Hall by over 30 percentage points. In 2018 in District two, white Republican candidate Rep. Martha Roby

defeated Democratic candidate Tabitha Isner by 23 percentage points.

129. In 2020 in District 3, which is 25.8% BVAP, white Republican candidate Rep. Mike Rogers defeated Black Democratic candidate Adia Winfrey by 35 percentage points. Similarly, in 2018, Rep. Rogers defeated Democratic candidate Mallory Hagan by over 27 percentage points.

130. Prior to 1960, the Legislature failed to reapportion for 50 years. As a result, Alabama's entire legislative apportionment scheme was struck down for violating the principle of one person, one vote. *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). On remand, a three judge court found that, in devising remedial maps to correct the malapportionment, the "Legislature intentionally aggregated predominantly Negro counties with predominantly white counties for the sole purpose of preventing the election of Negroes to [State] House membership." *Sims v. Baggett*, 247 F. Supp. 96, 108-109 (M.D. Ala. 1965).

131. Following *Reynolds* and the 1970 Census, the Legislature again failed to redistrict and a three judge federal court was forced to draw new district lines. *Sims v. Amos*, 336 F. Supp. 924, 940 (M.D. Ala. 1972). The court rejected the Alabama Secretary of State's proposed map because of its racially "discriminatory effect" on Black voters. *Id.* at 936.

132. In the 1980s, the United States Attorney General denied preclearance under the Voting Rights Act to maps drawn by the Legislature to redistrict

State House and Senate maps because of their discriminatory effect on Black voters in Jefferson County and the Black Belt. U.S. Dep't of Justice Ltr. to Ala. Attorney General Graddick, May 6, 1982, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-1520.pdf>. Shortly thereafter, a three judge court rejected Alabama's proposed interim remedial state maps in part because Alabama's maps "had the effect of reducing the number of 'safe' black districts" in and near Jefferson County. *Burton v. Hobbie*, 543 F. Supp. 235, 238 (M.D. Ala. 1982).

133. After the 1990 census, the State entered a consent decree to resolve a Voting Rights Act lawsuit filed on behalf of Black voters. *See Brooks v. Hobbie*, 631 So.2d 883, 884 (Ala. 1993).

134. Most recently, after the 2010 census, Black voters and legislators successfully challenged 12 state legislative districts as unconstitutional racial gerrymanders. *See Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1348-49 (M.D. Ala. 2017).

135. Today, Alabama has a majority-vote requirement in all primary elections.

136. Before the Civil War, Black people were barred from voting in the state. After the passage of the Reconstruction Acts and Amendments, Alabama was forced to allow Black men access to the franchise, and the 1867 Alabama Constitution granted every male person over the age of 21—who satisfied the citizenship and residency requirements—the right to vote.

This meant that for the first time in Alabama's history, Black people voted and held public office.

137. In response, white leaders reformed the Democratic party with the intent of "redeeming" the State and re-establishing white supremacy. This was accomplished by using violence to deter Black people from political participation and, once the Redeemers returned to political office, to pass racially discriminatory laws to cement their control.

138. In 1874, Democratic candidates were elected to public office in large numbers. On election day, in Eufaula, Alabama, members of a white paramilitary group known as the White League, killed several unarmed Black Republican voters and turned away thousands of voters from the polls.

139. The following year, in 1875, the Alabama legislature adopted a new state constitution and passed a series of local laws and ordinances designed to strip Black Americans of the civil rights they enjoyed briefly during Reconstruction.

140. At the 1901 Constitutional Convention, 155 white male delegates gathered in Montgomery with the express intention "to establish white supremacy in the State."

141. The Convention ratified changes to the constitution that required literacy tests as a prerequisite to register to vote and mandated payment of an annual \$1.50 poll tax, which was intended to and had the effect

of disenfranchising Black voters. *United States v. Alabama*, 252 F. Supp. 95, 99 (M.D. Ala. 1966).

142. After the United States Supreme Court invalidated white-only primaries in 1944, Alabama passed the “Boswell Amendment” to its Constitution in 1946, adding an “understanding requirement” meant to give registrars broad discretion to deny African Americans the ability to register to vote.

143. After a federal court invalidated the Boswell Amendment in 1949, Alabama replaced its understanding requirement with a literacy test, again with the purpose of preventing African Americans from registering to vote.

144. After the Supreme Court outlawed the white primary in 1944, many Alabama counties shifted to at-large elections, the intent of which was to prevent African Americans from electing their candidates of choice.

145. In 1951, Alabama enacted a law prohibiting single-shot voting in municipal elections, the intent of which was to prevent African Americans from electing their candidates of choice.

146. In 1957, Alabama transformed the boundaries of the city of Tuskegee into a twenty-eight-sided figure designed to fence out African Americans from the city limits and ensure that only white residents could elect city officials. *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

147. In 1964 and 1965, Dallas County Sheriff Jim Clark, Alabama state troopers, and vigilantes violently assaulted peaceful Black protesters attempting to gain access to the franchise.

148. On March 7, 1965, in what became known as Bloody Sunday, state troopers viciously attacked and brutally beat unarmed peaceful civil rights activists crossing the Edmund Pettus Bridge in Selma, where less than 5 percent of Black voters were registered to vote. Bloody Sunday helped pave the way for the passage of the Voting Rights Act in 1965 and Alabama was declared a “covered” state under Section 4(b) of the Act.

149. Between 1965 and 2013, at least 100 voting changes proposed by Alabama state, county or city officials were either blocked or altered pursuant to Section 5 of the Voting Rights Act. No objection was raised after 2008. The objections include at least 16 objections between 1969 and 2008 in cases where a proposed state or local redistricting plan had the purpose or would have the effect of diminishing the ability of Black voters to elect their candidates of choice. The last sustained objection to an Alabama state law occurred in 1994.

150. In 1986, a court found that the state laws requiring numbered posts for nearly every at-large voting system in Alabama had been intentionally enacted to dilute Black voting strength, and that numbered posts had the effect of diluting Black voting strength in at-large elections. *Dillard v. Crenshaw Cty.*,

640 F. Supp. 1347, 1357 (1986). The court also found that from the late 1800s to the 1980s, Alabama had purposefully manipulated the method of electing local governments as needed to prevent Black citizens from electing their preferred candidates. *Id.*

151. Ultimately, a defendant class of 17 county commissions, 28 county school boards, and 144 municipalities were found to be employing at-large election systems designed and motivated by racial discrimination. These cases resulted in settlement agreements with about 180 Alabama jurisdictions that were required to adopt new election systems including single-member districts, limited voting, and cumulative voting systems, in an attempt to purge the state's election systems of intentional discrimination.

152. Between 1965 and 2021, subdivisions in Alabama continued to use at-large elections with numbered posts.

153. Federal courts recently ruled against or altered local at-large voting systems with numbered post created by the State Legislature to address their alleged racially discriminatory purpose or effect. *See, e.g., Jones*, 2019 WL 7500528, at *4; *Ala. State Conf. of the NAACP v. City of Pleasant Grove*, No. 2:18-cv-02056, 2019 WL 5172371, at *1 (N.D. Ala. Oct. 11, 2019).

154. Black voters have challenged other Alabama voting laws under the Voting Rights Act and the Constitution in federal court. *See, e.g., People First of Alabama v. Merrill*, 491 F. Supp. 3d 1076, 1106-1107 (N.D. Ala. 2020); *Harris v. Siegelman*, 695 F. Supp. 517,

530 (M.D. Ala. 1988). For example, the Supreme Court struck down Alabama's discriminatory misdemeanor disfranchisement law, *Hunter v. Underwood*, 471 U.S. 222 (1985), and a state law permitting certain discriminatory annexations, *Pleasant Grove v. United States*, 479 U.S. 462, 466-67 (1987).

155. In 2020, the United States District Court for the Middle District of Alabama held as follows in a case where plaintiffs argued that Section 2 of the Voting Rights Act requires Alabama to elect state appellate judges by districts:

Alabama today is a vastly different place than it was even a half-century ago. Overt discriminatory election devices have long been eliminated. Voter registration and turnout rates among African-Americans and whites have reached parity. . . . In 2017, Doug Jones became the first Democrat to win a U.S. Senate seat in Alabama in a quarter century, in an election in which African-American votes were decisive. Plaintiffs simply have not shown that, in present-day Alabama, there are any barriers keeping African Americans from participating in the political process as voters. The level of black participation in the electoral process is not depressed.

156. *Alabama State Conf. of Nat'l Ass'n for Advancement of Colored People v. Alabama*, No. 2:16-CV-731-WKW, 2020 WL 583803, at *41 (M.D. Ala. Feb. 5, 2020) (citations omitted).

157. Since the *Shelby County v. Holder* decision in 2013, federal courts have ordered more than one political subdivision in Alabama to be re-subjected to preclearance review under Section 3(c) of the Voting Rights Act. See *Jones*, 2019 WL 7500528, at *4-5; *Allen v. City of Evergreen*, No. 13-0107, 2014 WL 12607819, at *2 (S.D. Ala. Jan. 13, 2014).

158. Individuals with lower household incomes are less likely to vote.

159. Alabama's policy of denying Black people equal access to education persisted after the Supreme Court's decision in *Brown v. Board of Education*. In 1956, after a federal court ordered the segregated University of Alabama to admit a Black woman named Autherine Lucy, white people gathered on campus, burned a cross, and marched through town chanting, "Hey, hey, ho, ho, Autherine has got to go!"

160. In 2018, in a case challenging the attempt by the City of Gardendale, which is 85% white, to form a school district separate from Jefferson County's more racially diverse district, the Eleventh Circuit affirmed a finding that "race was a motivating factor" in the city's effort. *Stout v. Jefferson Cnty. Bd. of Ed.*, 882 F.3d 988, 1007-1009 (11th Cir. 2018).

161. Alabama's constitution still contains language that mandates separate schools for Black and white students after a majority of voters rejected repeal attempts in 2004 and 2012, although the provision has not been enforceable for decades.

162. Alabama was the first state ever to be subjected to a statewide injunction prohibiting the state from failing to disestablish its racially dual school system. *Lee v. Macon Cty. Bd. of Ed.*, 267 F. Supp. 458 (M.D. Ala.), *aff'd* 389 U.S. 215 (1967). The order resulted from the court's finding that the State Board of Education, through Governor George Wallace, had previously wielded its powers to maintain segregation across the state. *Id.*

163. A trial court found that for decades, state officials ignored their duties under the statewide desegregation order. *See Lee v. Lee Cnty. Bd. of Educ.*, 963 F. Supp. 1122, 1128-30 (M.D. Ala. 1997). A court also found that the state did not satisfy its obligations to remedy the vestiges of segregation under this order until as late as 2007. *Lee v. Lee County Bd. of Educ.*, 476 F. Supp. 2d 1356 (M.D. Ala. 2007).

164. In 1991, a trial court in *Knight v. Alabama*, 787 F. Supp. 1030 (N.D. Ala. 1991), found that Alabama had failed to eliminate the lingering and continued effects of segregation and discrimination in the University of Alabama and Auburn University, and at the state's public Historically Black Colleges and Universities (HBCUs).

165. In 1995, the trial court issued a remedial decree analogous to the statewide injunction issued in *Lee v. Macon*, and the court oversaw implementation of that order for over a decade. *Knight v. State of Ala.*, 900 F. Supp. 272 (N.D. Ala. 1995). Alabama did not satisfy

its obligations under that order until 2006. *Knight v. Alabama*, 469 F. Supp. 2d 1016 (N.D. Ala. 2006).

166. Alabama has never had more than one African-American congressional representative, and no African American has been elected to the U.S. House of Representatives outside of CD 7.

167. There are currently no African-American statewide officials in Alabama.

168. Only two African Americans have been elected to statewide office in Alabama, and both ran as incumbents after first being appointed. No Black person has won statewide office in Alabama since 1996.

169. The overwhelming majority of African-American representatives in the Alabama Legislature come from majority-minority districts.

170. None of the current statewide elected officials are Black. Only two Black people have ever been elected to statewide office. In both instances, the office was associate justice of the Alabama Supreme Court. In 1982 and 1988, the late Justice Oscar W. Adams, Jr. was elected to two consecutive terms; and, in 1994, Justice Ralph D. Cook won an unopposed statewide election. In 2000, both Justice Cook and the then-recently appointed Justice John England, both Black Democrats, lost elections to white Republican candidates.

171. Kenneth Paschal is a Black Republican who currently represents District 73 in the Alabama House of Representatives. District 73 includes Shelby County.

There are currently no Black Republicans in the state Senate or in any statewide elective positions.

172. In 2014, following the Supreme Court's decision in *Shelby County v. Holder*, Alabama's photo identification law went into effect.

173. The United States Bureau of the Census releases data to the states after each census for use in redistricting. This data includes population and demographic information for each census block.

174. Following the 2020 Census, the Census Bureau was statutorily required to release this redistricting data no later than April 1, 2021. 13 U.S.C. § 141. However, in February 2021, the Census Bureau issued a press release stating that it would not release the redistricting data until September 30, 2021. On March 10, 2021, the State of Alabama sued the Census Bureau to require it to comply with the statutory deadline. *See Alabama v. United States Dep't of Com.*, No. 3:21-CV-211-RAH-ECM-KCN, (M.D. Ala.) (three judge-court). On March 15, 2021, the Census Bureau issued a further press release stating it could provide redistricting data in a legacy format by mid-to-late August 2021. The Census Bureau provided initial redistricting data to Alabama on August 12, 2021.

175. On May 5, 2021, the Reapportionment Committee of the Alabama Legislature passed the Redistricting Guidelines to be used by the Committee during the redistricting process. Those Guidelines passed on a 16-1 vote, with both Republicans and Democrats as

well as Black and White legislators supporting the Guidelines.

176. The Reapportionment Committee held 28 public hearings at locations around the state between September 1 and September 16. The public could attend these hearings in person or via videoconference.

177. On October 25, 2021, Alabama Governor Kay Ivey officially called for the Legislature to convene in a special session to address redistricting.

178. On October 26, 2021, the Reapportionment Committee met and considered a draft congressional plan.

179. On October 28, 2021, the special session began and the Congressional Plan (then H.B. 1) was assigned to the House Committee on State Government. On October 29, the Congressional Plan (in addition to three other redistricting plans) was voted out of committee. All Black Representatives on the Committee voted against the map.

180. On November 1, the House of Representatives considered the Congressional Plan. The same day, the House passed the Congressional Plan 6538; in addition to every Democratic Representative, several Republicans voted against the plan. One Black Representative, Rep. Keith Paschal who is the sole Black Republican legislator, voted in favor of the Congressional Plan.

181. On November 2, the Senate General Fund and Appropriations Committee considered the

Congressional Plan. The Plan was voted out of Committee that same day. All Black Senators on the Committee voted against the map.

182. On November 3, the full Senate approved the Congressional Plan 22-7 and forwarded the Plan to Alabama Governor Kay Ivey. All six Black Senators present and Billy Beasley, the sole White Democratic Senator, voted against the map. On November 4, Governor Ivey signed the Congressional Plan into law.

183. Alabama's primary elections—including elections for U.S. Congress—are scheduled for May 24, 2022. Candidates seeking their party's nomination must file a declaration of candidacy with the state party chairman by January 28, 2022. *See* Ala. Code § 17-13-5(a).

184. On Tuesday, July 23, a special election was held to fill a vacancy in District 73 of the Alabama House of Representatives. The winner was Kenneth Paschal, the Republican candidate, who received 2,743 votes. Representative Paschal is African American. His white Democratic opponent received 920 votes. District 73 is located in Shelby County, Alabama. Based on 2010 census data, the voting-age population of District 73 was 84.12% white and 9.75% black. Representative Paschal defeated a white Republican candidate in the primary election by 64 votes. Representative Paschal received 1,476 votes, while his white opponent received 1,412 votes.

JA181

DATED this 7th day
of Dec. 2021.

/s/ Deuel Ross

Deuel Ross*
NAACP LEGAL
DEFENSE &
EDUCATIONAL
FUND, INC.
700 14th Street N.W.
Ste. 600
Washington, DC 20005
(202) 682-1300
dross@naacpldf.org

Leah Aden*
Stuart Naifeh*
Kathryn Sadasivan^
(ASB-517-E48T)
NAACP LEGAL
DEFENSE &
EDUCATIONAL
FUND, INC.
40 Rector Street, 5th Floor
New York, NY 10006
(212) 965-2200
laden@naacpldf.org
snaifeh@naacpldf.org
ksadasivan@naacpldf.org

Shelita M. Stewart*
Jessica L. Ellsworth*
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, D.C. 20004
(202) 637-5600
shelita.stewart@
hoganlovells.com

Respectfully submitted,

/s/ Sidney M. Jackson

Sidney M. Jackson
(ASB-1462-K4OW)
Nicki Lawsen
(ASB-2602-COOK)
WIGGINS CHILDS
PANTAZIS FISHER &
GOLDFARB, LLC
301 19th Street North
Birmingham, AL 35203
Phone: (205) 341-0498
Fax: (205) 254-1500
sjackson@wigginschilds.com
nlawsen@wigginchilds.com

/s/ Davin M Rosborough

Davin M. Rosborough*
Julie Ebenstein*
AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
125 Broad St.
New York, NY 10004
(212) 549-2500
drosborough@aclu.org
jebenstein@aclu.org

/s/ LaTisha Gotell Faulks

LaTisha Gotell Faulks
(ASB-1279-I63J)
Kaitlin Welborn*
AMERICAN CIVIL
LIBERTIES UNION
OF ALABAMA

JA182

David Dunn*
HOGAN LOVELLS US LLP
390 Madison Avenue
New York, NY 10017
(212) 918-3000
david.dunn@
hoganlovells.com

P.O. Box 6179
Montgomery, AL 36106-0179
(334) 265-2754
tgfaulks@aclualabama.org
kwelborn@aclualabama.org

Michael Turrill*
Harmony A. Gbe*
HOGAN LOVELLS US LLP
1999 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067
(310) 785-4600
michael.turrill@
hoganlovells.com
harmony.gbe@
hoganlovells.com

Blayne R. Thompson*
HOGAN LOVELLS US LLP
609 Main St., Suite 4200
Houston, TX 77002
(713) 632-1400
blayne.thompson@
hoganlovells.com

Attorneys for Plaintiffs

Anthony Ashton*
Anna Kathryn Barnes*
NATIONAL ASSOCIATION
FOR THE ADVANCEMENT
OF COLORED PEOPLE
(NAACP)
4805 Mount Hope Drive
Baltimore, MD 21215
(410) 580-5777
aashton@naacpnet.org
abarnes@naacpnet.org

***Attorneys for Plaintiff
Alabama State
Conference of
the NAACP***

* *Pro hac vice* motions forthcoming

JA183

^ Request for admission to the Northern District of
Alabama forthcoming

Steve Marshall
Attorney General

s/ James W. Davis
Edmund G. LaCour Jr. (ASB-9182-U81L)
Solicitor General

James W. Davis (ASB-4063-I58J)
Deputy Attorney General
A. Reid Harris (ASB-1624-D29X)
Brenton M. Smith (ASB-1656-X27Q)
Benjamin M. Seiss (ASB-2110-000W)
Assistant Attorneys General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ALABAMA

501 Washington Avenue
P.O. Box 300152
Montgomery, Alabama 36130-0152
Telephone: (334) 242-7300
Fax: (334) 353-8400
Edmund.LaCour@AlabamaAG.gov
Jim.Davis@AlabamaAG.gov
Ben.Seiss@AlabamaAG.gov
Reid.Harris@AlabamaAG.gov
Brenton.Smith@AlabamaAG.gov

Counsel for Secretary Merrill

Dorman Walker (ASB-9154-R81J)
Balch & Bingham LLP
Post Office Box 78 (36101)
105 Tallapoosa Street, Suite 200
Montgomery, AL 36104

JA184

Telephone: (334) 834-6500
dwalker@balch.com

Counsel for Jim McClendon and Chris Pringle

[Certificate Of Service Omitted In Printing]

MILLIGAN V. MERRILL
Case No.: 2:21-cv-012921
DECLARATION OF JOSEPH BAGLEY PHD

(Filed Dec. 14, 2021)

I. CREDENTIALS, PURPOSE

I am an Assistant Professor of History at Perimeter College, Georgia State University. My specific area of study is United States constitutional and legal history, politics, and race relations, with a focus on Alabama and Georgia. I earned a Ph.D. in 2013 from Georgia State and an M.A. (2007) and B.A. (2004) from Auburn University. My first book, *The Politics of White Rights: Race, Justice, and Integrating Alabama's Schools*, was published in November 2018 by the University of Georgia Press in the *Politics and Culture of the Twentieth Century South* series. There, I assert that Alabama lawmakers used lessons from the fight against school desegregation to perfect the process of “colormasking” legislation, or in creating racially discriminatory laws – such as those that maintain the political and electoral status quo when it comes to Black voting and political representation – that can withstand legal tests. My current projects include a book manuscript examining the struggle for voting rights in Alabama and a grant proposal for a National Endowment for the Humanities “Public Humanities Discussions” series focused on citizenship rights and obligations in Georgia.

I have been certified as an expert by this Court in previous voting rights litigation. I submitted a report,

testified in a deposition and at trial, and was cited in the Court's opinion in *People First of Alabama v. Merrill* in 2020.¹ My academic work has been cited in the *Case Western Law Review*, the *Journal of Urban History*, *Rural Sociology*, the *Alabama Civil Rights and Civil Liberties Law Review*, and in the *New York Times Magazine* (*NYTM*). My doctoral thesis, "School Desegregation, Law and Order, and Litigating Social Justice in Alabama," which formed the basis of my book manuscript, was quoted multiple times by Pulitzer Prize winner Nikole Hannah-Jones in her September 6, 2017 piece in *NYTM*, "Resegregation in Jefferson County," in which Hannah-Jones examines the city of Gardendale's attempt to secede from the county school system – an issue litigated in the *Stout v. Jefferson County Board of Education* school desegregation case that remains before this Court.²

¹ *People First of Alabama v. Merrill*, 467 F.Supp.3d 1179 (2020).

² Wendy Parker, "Why Alabama School Desegregation Succeeded (And Failed)," 67 *Case Western Law Review*, 1091 (2017); Rebecca Retzlaff, "Desegregation of City Parks and the Civil Rights Movement: The Case of Oak Park in Montgomery, Alabama," *Journal of Urban History* 47.4, 715 (2019); Erika Frankenberg, "The Impact and Limits of Implementing Brown: Reflections from Sixty-Five Years of School Segregation and Desegregation in Alabama's Largest School District," 11 *Alabama Civil Rights and Civil Liberties Law Review*, 33 (2019); Bryan Mann, "Segregation Now, Segregation Tomorrow, Segregation Forever? Racial and Economic Isolation and Dissimilarity in Rural Black Belt Schools in Alabama," *Rural Sociology* 86.3, 523 (2021). Nikole Hannah-Jones, "The Resegregation of Jefferson County," *The New York Times Magazine*, Sept. 6, 2017.

I include here a C.V. listing conference presentations, invited talks, essays, and solicited book and manuscript reviews that I have written for the University Press of Kansas, the *Alabama Review*, and journals such as *Urban History* and *History of Education Quarterly*. I am compensated at the rate of \$150 per hour for my work in preparing this report. This compensation is not dependent upon my findings, and my opinions stated in this report do not necessarily represent the sum total of my opinions in this matter, which are subject to change upon further research or revelations.

I have been asked by plaintiffs' counsel in this case to examine any relevant historical and contemporary evidence and to determine if, in my opinion, Alabama House Bill 1 ("H.B. 1"), establishing the map redrawing the state's congressional districts following the release of the 2020 Census data, will result in an impairment of Black voters' ability to participate fully and equitably in the political process and to elect candidates of their choice. My analysis adheres to the common standards of historiography, meaning that I have objectively examined different types of sources – the legislative and judicial record, newspaper coverage, campaign literature, and public statements, for example, along with the existing scholarship and the established historical background – and weighed all of that material collectively in forming my opinions. In my evaluation of this evidence and in my effort to determine whether, in my opinion, H.B. 1 will deny Black citizens of Alabama an equitable right to elect candidates of their choice, I am also guided by the "totality

of the circumstances” test, as applied using the factors set forth by the U.S. Senate Judiciary Committee during the amendment of Section 2 of the Voting Rights Act in 1982 and subsequently referenced by the Supreme Court in *Thornburg v. Gingles* (478 U.S. 30, 1986, “*Gingles I*”) (the “Senate Factors”).³ There are seven core Senate Factors and two typical “additional” factors that might be considered to the extent that they are appropriate.

These include:

- The “extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process” [Factor 1]
- The “extent to which voting in the elections of the state or political subdivision is racially polarized” [Factor 2]

³ In 1980, the Supreme Court held in *City of Mobile v. Bolden* (446 U.S. 55) that discriminatory results alone did not warrant relief in voting rights litigation and that plaintiffs needed to establish discriminatory intent, prompting Congress to amend Section 2. The committee derived the relevant factors from pre-Bolden jurisprudence, especially *Whitcomb v. Chavis* (403 U.S. 124, 1971), *White v. Regester* (412 U.S. 755, 1973) and *Zimmer v. McKeithen* (485 F.2d 1297, 5th CCA, 1973). Report of the Committee on the Judiciary on S. 1992 (Voting Rights Act Extension), United States Senate, 97th Congress, 2nd Session, Report No. 97-417 [Senate Factors Report], p. 28, n. 113; Peyton McCrary, “History in the Courts: The Significance of *City of Mobile v. Bolden*,” in Chandler Davidson (Ed.), *Minority Vote Dilution* (Washington, D.C.: Howard University Press, 1984), pp. 47-65.

JA189

- The “extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group” [Factor 3]
- If “there is a candidate slating process, whether the members of the minority group have been denied access to that group” [Factor 4]
- The “extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process” [Factor 5]
- Whether “political campaigns have been characterized by overt or subtle racial appeals” [Factor 6]
- The “extent to which members of the minority group have been elected to public office in the jurisdiction” [Factor 7]
- 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” [Factor 8, Additional Factor]
- And “Whether the policy underlying the state or political subdivision’s use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous” [Factor 9, Additional Factor].

These factors allow scholars and courts to undertake a “practical evaluation of the past and present realities” and to determine “whether the political process is equally open to minority voters” (*Gingles I* at 478). As the Court stated in *Gingles*, other additional factors may be considered, and there is no requirement that all factors be considered or that any particular weight be assigned to any one factor.⁴

Given the nature of this case and my own expertise, my report focuses on Factors 1, 5, 6, 7, and 8. I will not systematically address here Factors 2, 3, or 4. While Factor 2 carries great weight in voting rights litigation, racially polarized voting (“RPV”) analysis is generally the purview of specially trained political scientists. Plaintiffs may or may not employ such scholars to conduct RPV analysis, but I do not draw any conclusions based on RPV except to acknowledge that federal courts have repeatedly determined that voting in Alabama, including in congressional contests, has been racially polarized.⁵ I discuss the kind of enhancing devices and schemes covered in Factor 3 in my treatment of Factor 1, and I contend that the discriminatory

⁴ Senate Factors Report, pp. 28-9.

⁵ *Greater Birmingham Ministries v. Merrill*, 284 F. Supp. 3d 1253, 1258 (ND AL, 2018); *Alabama Legislative Black Caucus v. Alabama*, 135 S.Ct. 1257, 1272 (2015); *White v. Alabama*, 867 F. Supp. 1519, 1552 (MD AL, 1994), vacated on other grounds, 74 F.3d 1058 (11th CCA, 1996); *Dillard v. Baldwin County Commission*, 222 F. Supp. 2d 1283, 1290 (MD AL, 2002), affirmed, 376 F.3d 1260 (11th CCA, 2004); *Wilson v. Jones*, 45 F. Supp. 2d 945, 951 (S.D. Ala. 1999), affirmed sub nom. *Wilson v. Minor*, 220 F.3d 1297 (11th CCA, 2000).

redistricting plans discussed therein are as much exemplary of the devices highlighted by this factor as the at-large election schemes and numbered place laws of the (somewhat) more distant past.

My summary findings as to the relevant Senate Factors with respect to this report are as follows:

Factor 1: the state of Alabama has an undisputed history of discrimination against Black citizens, especially when it comes to registering to vote, voting, and enjoying an equitable chance to participate in the political process, and this has been recognized by numerous courts. In particular, white legislators of both major political parties have, in the last 50 years, manipulated the redistricting process to prevent Black citizens from electing members of Congress or, in the last 30 years, to limit Black voters' ability to elect members of Congress from more than one district.

Factor 5: the effects of past and ongoing discrimination in education, employment, health, and criminal justice are profound and have had a significant impact on Black voters' ability to participate fully in the political process.

Factor 6: despite a decades-long tradition of color-masking racial appeals, campaigns and politicians' public statements have recently trended back towards more overt racial appeals, and these have been plentiful in Alabama and attributable to its current members of Congress and candidates for those offices.

Factor 7: the ability of Black Alabamians to elect candidates from among their own to statewide offices has been almost nonexistent, while Black candidates have had some success at the local level, thanks to litigation and federal government intervention.

Factor 8 (Additional Factor 1): white lawmakers have been generally unresponsive to the needs and demands of Black citizens, as suggested by the fight for Medicaid expansion, by the actions of the state legislature since *Shelby County v. Holder*, and by lawmakers' failure to address much of what I discuss under Factor 5. The Court should also consider the votes of the members of the state's congressional delegation on other bills that the Black community in the state would tend to support, especially a redistricting plan that would provide for a second majority-minority congressional district.

Given these conclusions, in my opinion H.B. 1 will deny Black Alabamians an equitable right to elect candidates of their choice.

II. FACTOR 1: HISTORY OF DISCRIMINATION

As this Court found in 2020, "Black Alabamians have consistently overcome barriers to exercising their fundamental right to vote, only to later have that right curtailed," and the state's history of official discrimination is replete with facts that the Court described as "largely undisputed" (*People First of Alabama v. Merrill*, 467 F.Supp.3d 1179, ¶ 32, ND). Similarly, the court in *Alabama NAACP v. Alabama*, also in 2020, found

that, “Alabama’s history of discrimination against African Americans in all areas of life is long, well-documented, and undisputed” (CA 2:16-cv-00731-WKW-SMD, Feb. 5, 2020, MD, pp. 153-54). I will briefly summarize the history that is the basis for these findings for the Court, beginning with Reconstruction. As referenced, as recently as last year, federal courts in Alabama have ruled in favor of plaintiffs targeting vote dilution schemes that persist, having fallen through the cracks of administrative and judicial oversight.⁶

I conclude by examining the efforts of white Democrats and white Republicans in the state legislature, during the last 30 years, to manipulate the redistricting process to the detriment of Black voters. Of primary importance in this case, I trace the general characteristics of the state’s 7th Congressional District from the redistricting litigation of the 1990s to the present.

a. From Reconstruction to the Constitution of 1901

Alabama’s effort to restrict the rights of its Black citizens began when the enslaved became citizens. A pattern of advancement and backlash was thus established at the very beginning of the story of Black citizenship. After the Civil War, Alabama was among the first former Confederate states to enact “Black Codes”

⁶ Jones v. Jefferson County, No. 2:19-cv-01821-MHH (ND, 2019); Alabama State Conf. of the NAACP v. City of Pleasant Grove, No. 2:18-cv-02056 (ND, 2019).

limiting the citizenship rights of former slaves.⁷ The 14th Amendment invalidated such laws on equal protection grounds, and the 15th Amendment guaranteed formerly enslaved men the right to vote. While the Union Army was empowered to combat the Ku Klux Klan and other white supremacist groups, Alabama was forced to accede to some measure of Black voting and to the election of a few Black candidates to office though, even then, most offices were won by white Republicans. When the Union Army was removed from the state and priorities in Washington began to shift, white Democrats unleashed a campaign of violence aimed at “redemption,” or gaining back control of the state government. At the heart of that effort was the disenfranchisement of Black citizens. The party adopted the slogan “White Supremacy for the Right” (a slogan it did not abandon until 1966) and replaced the state’s Congressional Reconstruction constitution with one that protected white people in majority-Black areas by severely restricting home rule and giving

⁷ Alabama’s Black Code was enacted on January 15, 1866. It subjected anyone convicted of vagrancy, including “stubborn servant[s],” runaway apprentices, and “any person who habitually neglect[ed] his employment,” to a \$50 fine which, if unpaid, would compel convicted to work for his employer, usually the former master, for free until it was paid off. William Warren Rogers and Robert David Ward, “From 1865 through 1920,” in Rodgers, et al., Eds, *Alabama: The History of a Deep South State* (Tuscaloosa: University of Alabama Press, 1994), pp. 225-410, p. 238; Orville Vernon Burton, *The Age of Lincoln* (New York: Hill and Wang, 2008), pp. 267-69; Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863 – 1877* (New York: Harper Collins, 1988), pp. 199-201.

control over local governments to the governor and the state legislature.⁸

The “redeemer” Democrats used a variety of measures to consolidate that control: where white people constituted a local majority, legislators switched from district to at-large elections; where they did not, legislators eliminated elections in favor of gubernatorial appointment; they set higher bonds for office-holding, abolished courts, closed polling places, and eventually resorted to outright election fraud in the form of ballot-box stuffing. The legislature ultimately passed the Sayre Law, establishing what District Judge Myron Thompson would later describe as “a more respectable and cunning way of controlling or disenfranchising black voters” (*Harris v. Siegelman*, 695 F. Supp. 517, 522, MD, 1988). The Sayre Law replaced the “party ballot” with the “secret ballot,” which came with written instructions that could only be explained by a gubernatorially appointed poll official. Not only did this allow those officials to swindle Black voters, it discouraged many Black people from even bothering to go to the polls; the Sayre Law resulted in an immediate 22 percent drop in Black turnout.⁹

⁸ Rogers and Ward, “From 1865 through 1920,” pp. 244-45, 262-65; Peyton McCrary et al., “Alabama,” in Chandler Davidson et al., Eds, *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990* (Princeton: Princeton University Press, 1994), pp. 38-66, pp. 41-2; Brian Wilhelm, “The Election Riots of 1874,” *Encyclopedia of Alabama*, Nov. 6, 2009; Burton, *The Age of Lincoln*, pp. 300-322; Foner, *Reconstruction*, pp. 228-411.

⁹ Kousser, *The Shaping of Southern Politics*, pp. 133-35; McCrary, et al, “Alabama,” p. 42-43; Rodgers and Ward, “From

Emboldened by federal indifference, in 1901 Democrats held a constitutional convention for the expressed purpose of “avoid[ing] Negro domination” and “establish[ing] white supremacy.” The delegates’ “registered vow” was to “disfranchise every Negro in the state.” The constitution they adopted, which is still operative, featured provisions for an accumulating poll tax; property ownership and employment requirements for registering to vote; disenfranchisement of anyone convicted of vagrancy or “crimes of moral turpitude,” a deliberately chosen class of crimes for which Black people were more frequently convicted; and a literacy test to be administered by local (white) registrars, which is to say, one that could be discriminatorily administered and used to bar Blacks, but not poor whites, from registering to vote.¹⁰

1865 through 1920,” pp. 311-14, 21-34; Peyton McCrary, “Minority Representation in Alabama: The Pivotal Case of *Dillard v. Crenshaw County*,” in Raymond Arsenault et al. Eds, *Dixie Redux: Essays in Honor of Sheldon Hackney* (Montgomery: New South Books, 2013), pp. 379-97, pp. 382-83; J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restrictions and the Establishment of the One-Party South, 1880-1910* (New Haven: Yale University Press, 1974) pp. 45-79.

¹⁰ Kousser, *The Shaping of Southern Politics*. pp. 165-71; McCrary et al., “Alabama,” pp. 43-4; *Journal of the Proceedings of the Constitutional Convention of the State of Alabama, Held in the City of Montgomery, Commencing May 21, 1901* (Montgomery: Brown, 1901), at Alabama Department of Archives and History Digital Collections Online [hereinafter cited as ADAH Digital Collections], pp. 8-10, <http://digital.archives.alabama.gov/cdm/compoundobject/collection/legislature/id/16317/rec/1>; McCrary et al., “Alabama,” pp. 44; Rodgers and Ward, “From 1865 through 1920,” pp. 343-351; “delegates” quotation cited by the court in

Following the enactment of the new constitution, there was a 96 percent reduction in Black voter turnout, and the number of registered Black voters fell from 180,000 to 3,000. The constitution was upheld by the Supreme Court in *Giles v. Harris* (189 U.S. 475, 1903). The following year, the Alabama Democratic Party adopted the “white primary,” whereby membership was limited, as in a club, to white people, thus barring Black people from participating in what had become the only election that mattered. White supremacy was the order of the day in Alabama from that point until the Second World War.

The constitution also institutionalized what had already been written into the state’s penal code and had escaped Radical Republican censure – the new document included an anti-miscegenation clause that read, “The legislature shall never pass any law to authorize or legalize any marriage between any white person and a negro, or descendant of a negro.” A “Negro” was anyone with “one drop” of Black “blood.” The anti-miscegenation statute was revised in 1940 to read, “If any white person and any negro, or the descendant of any negro intermarry, or live in adultery or fornication with each other, each of them shall, on conviction, be imprisoned in the penitentiary for not less than two nor more than seven years.” Such laws were

United States v. Alabama, 252 F. Supp. 95, 98 (MD, 1966); on crimes of moral turpitude, see *Hunter v. Underwood*, 471 U.S. 222, 232, 1985.

invalidated in *Loving v. Virginia*, but the voters of Alabama did not overturn its ban officially until 2000.¹¹

b. From World War II to the Civil Rights Movement

The “white primary” was overturned when the Supreme Court handed down *Smith v. Allwright* in 1944 (321 U.S. 649). True to the pattern of advance-and-restrict, however, Alabama’s white Democratic lawmakers responded by enacting the Boswell Amendment to the 1901 constitution – a facially race-neutral provision that required applicants for voter registration to “understand and explain” an article of the U.S. Constitution. One of the bill’s framers admitted that this would enable boards of registrars to “prevent from registering those elements in our community which have not yet fitted themselves for self-government,” meaning Black people.¹² Birmingham’s Arthur Shores

¹¹ *Loving v. Virginia*, 388 U.S. 1 (1967); Jeremy W. Richter, “Alabama’s Anti-Miscegenation Statutes,” *The Alabama Review*, Volume 68, Number 4 (October 2015): pp. 345-365, p. 345-46; Aaron Blake, “Alabama was a final holdout on desegregation and interracial marriage. It could happen again on gay marriage,” *Washington Post*, Feb. 9, 2015, <https://www.washingtonpost.com/news/the-fix/wp/2015/02/09/alabama-was-a-final-holdout-on-desegregation-and-interracial-marriage-it-could-happen-again-on-gay-marriage/>.

¹² McCrary et al., “Alabama,” p. 44-45; McCrary, “Minority Representation in Alabama,” pp. 408-9; Brian Landsberg, *Free at Last to Vote: The Alabama Origins of the Voting Rights Act* (Lawrence: University Press of Kansas, 2007), p. 18; Steven F. Lawson, *Black Ballots: Voting Rights in the South, 1944-1969* (New York, Columbia University Press, 1976), pp. 90-93; Scotty E. Kirkland,

challenged the Boswell Amendment, and in 1949 a federal court found that the law was “intended to be, and [was] being used for the purpose of discriminating against applicants for the franchise on the basis of race or color” and gave registrars “naked and arbitrary power,” which they were using to disqualify Black applicants using the “understand and explain” clause (*Davis v. Schnell*, 81 F. Supp. 872, 880, SD, quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 366, 1886).

The state legislature responded by presenting the almost exclusively white electorate with a Voter Qualification Amendment, which it ratified in 1951. The amendment replaced the “understand and explain” language with a deliberately byzantine application process devised by the state Supreme Court. Prospective voters had to navigate a lengthy questionnaire (21 questions), perform a reading of the U.S. Constitution at the direction of a white registrar, and present a “supporting witness,” an existing voter who would testify to the applicant’s residence and good standing, as well as the witness’s own occupation and employer.¹³

“Mobile and the Boswell Amendment,” *Alabama Review*, 65 (July 2012), pp. 205-19; Donald S. Strong, *Registration of Voters in Alabama* (Bureau of Public Administration, University of Alabama, 1956), p. 22; *Davis v. Schnell*, (81 F. Supp. 872, 879, SD AL, 1949).

¹³ Annotated copies of Alabama Voter Questionnaires, Papers of Frank M. Johnson, Library of Congress Manuscript Reading Room, Washington D. C. [hereinafter cited as Frank Johnson Papers LOC], Container 7, U.S. v. Alabama (Bullock County), Folders 5-6; *Anniston Star*, Feb. 28, 1951; *Talladega Daily Home*, Feb. 28, 1951; *Mobile Journal*, Oct. 3, 1952; *Dothan Eagle*, Feb. 28, 1951; McCrary et al., “Alabama,” p. 45; Landsberg, *Free at*

The state legislature also enacted an “anti-single-shot” voting law. When Black citizens began agitating for citizenship rights during and after World War II, many local governments, via state legislative delegations, switched to at-large electoral systems, as some had done during the “redemption,” to avoid the election of Black officials in districts or wards that were predominantly Black. Black voters, though, realized that they could increase the numerical value of their vote by throwing all of their support behind one candidate. The anti-single-shot law, the brainchild of Sam Engelhardt, a pioneer of the white supremacist Citizens’ Council in the state and the author of the infamous Tuskegee gerrymander, invalidated any ballot in an at-large election that did not include a full slate of choices. That law and the new voter registration questionnaire, along with tactics like simply closing a registration office when Black people came to register, served to limit Black access to the franchise at a time when the state’s handful of Black attorneys, including Shores, had little help in assailing the legislative wall that the state had built over the preceding half century.¹⁴

In 1957, Congress passed the first Civil Rights Act since Reconstruction, with no southern support. Three

Last to Vote, p. 19, Strong, *Registration of Voters in Alabama*, p. 27, 34-35.

¹⁴ McCrary et al., “Alabama,” p. 46, 402 n 74; McCrary, “Minority Representation in Alabama,” p. 409; Joseph Bagley, *The Politics of White Rights: Race, Justice, and Integrating Alabama’s Schools* (Athens: University of Georgia Press, 2018), pp. 19, 213; *Gomillion v. Lightfoot*, 364 U.S. 339 (1961); *Sellers v. Wilson*, 123 F. Supp. 917 (MD, 1954).

years later, it passed the Civil Rights Act of 1960. These acts created the Civil Rights Division (“CRD”) within the Justice Department, tasked it with enforcing the 15th Amendment in the South, gave it the tools to bring suit on behalf of the United States against states that were discriminating in voter registration, and empowered it to seek the appointment of federal voting referees. The division subsequently sued the state of Alabama and registrars in numerous counties in the Alabama Black Belt – the old, black-soiled plantation belt where Black majorities threatened white supremacy in the most critical way. The CRD targeted the discriminatory use of the state’s voter registration questionnaire.¹⁵

In one of the CRD’s Black Belt suits, Judge Frank Johnson determined that “As to Negro applicants, the defendants used the [voter registration] questionnaire to obtain substantive information regarding the applicants’ qualifications for registering and also as a tricky examination or test. If a Negro applicant failed to meet the standard required of him, he was denied registration regardless of whether the error or omission on the form was formal, technical, or inconsequential.” Judge Johnson explained, “For white applicants, the questionnaire was not used as an examination or

¹⁵ Landsberg, *Free at Last to Vote*, pp. 7, 26-27; Blacksher, et.al., “Voting Rights in Alabama, 1982-2006,” 17 *Southern California Review of Law and Social Justice* 2, Spring 2008, pp. 249-281, pp. 252-53.

test” (*United States v. Penton*, 212 F. Supp. 193, 198, 1962).¹⁶

Not all of the CRD Black Belt suits were filed Johnson’s Middle District. Wilcox County lies in the Southern District, where sat Judge Daniel Thomas, known to delay and frustrate civil rights actions on his docket.¹⁷ The CRD alleged that in Wilcox, from January 1, 1959, through October 17, 1963, 29 Black residents tried to register and were denied, whereas 376/386 white applicants were able to register in the same period. Despite the fact that 70 percent of the county’s voting age population was Black, zero Black people were registered to vote at the time the suit was filed. Judge Thomas declined to enjoin the county officials but was reversed by the 5th Circuit, which found that there was “substantial uncontradicted evidence in the record that the registration officials applied the supporting witness requirement in a discriminatory fashion” (*United States v. Logue*, 344 F.2d 290, 291-92, 1965). By the time of that decision, various

¹⁶ The form used needlessly verbose language; for example, it prompted prospective voters to answer the “interrogatories propounded” by the board. It asked applicants to read selected portions of the Constitution in front of the registrars. Applicants had to produce a supporting witness in person who would vouch for their residency and good character. And the form eventually included an “Insert” section that allowed for rotating civics questions, so that voting rights organizations could not coach applicants on the answers. Memorandum in Support of Plaintiffs’ Motion of Oct. 31, 1963, *United States v. Penton*, CA 1714-N, Appendix with Applications, in Frank Johnson Papers LOC, Container 18, Folder 1.

¹⁷ Bagley, *Politics of White Rights*, p. 54.

aspects of the questionnaire had been enjoined, from Wilcox to Montgomery and from Sumter to Macon and Bullock.¹⁸

Beyond the questionnaire, local officials engaged in various other tactics to frustrate Black citizens from voting. Defendants in the Montgomery CRD case attempted to distort registration numbers by race by denying a few applications from white would-be voters; the court found this to be “nothing more than a sham and an attempt on the part of the [Montgomery] Board [of Registrars] to disguise their past discriminatory practices.” Judge Johnson observed that this “approached the ridiculous when the Board rejected the law partner of one of the defense attorneys, a retired general and graduate of West Point, and the college graduate son of one of the State’s attorneys general” (*Penton*, at 198). Officials in Elmore County denied applications from Black people on minor technical grounds, while not doing the same for white people; rendered assistance to white applicants and not to Black applicants; failed to notify Black applicants of the need to sign an oath, then disqualified them for not signing; failed to notify Black applicants when their registration was denied; and required that Black

¹⁸ United States v. Alabama (Macon), 192 F.Supp. 677 (MD, 1961); United States v. Alabama (Bullock), Findings of Fact, Concl. Of Law, and Order, April 27, 1965 (MD, AL), Frank Johnson Papers, Container 7, Folder 4; *Birmingham News*, Sept. 8, 1959; *Huntsville Times*, March 21, 30, 1961, Dec. 16, 1963; *Ope- lika Daily News*, Jan. 21, 1961; *Montgomery Advertiser*, Dec. 17, 1963.

applicants wait three months before attempting again to register.¹⁹

Lawmakers then replaced the anti-single-shot law with a numbered post law in conjunction with a majority vote requirement and staggered terms. Judge Myron Thompson would later describe how the numbered place law “intentional[ly] . . . reshaped at-large systems into more secure mechanisms for discrimination” and became the “the discriminatory centerpiece” of a vote dilution scheme (*Dillard v. Crenshaw County*, 640 F. Supp, 1347, 1357, MD, 1986). Candidates had to run for specific, enumerated posts or places on a given body, be it a school board or county commission or city council. And with terms staggered, each contest would be head-to-head and at-large, which is to say county or city-wide. White majorities in registered voters could then use the majority vote requirement to win, potentially, each and every seat, each and every time.²⁰

Democratic Party leader Frank Mizell laid bare the intent behind this arrangement in a meeting of the State Democratic Executive Committee, a transcript of which was later discovered by a historian working in the *Dillard v. Crenshaw* case. “If you have people who want to vote as a bloc,” Mizell explained, using a euphemism for the Black vote, “it would be very easy under the single shot voting for all of them to come in, to put a scallowag or a Negro in there.” There was, he said, a “situation in Alabama that we are becoming

¹⁹ *United States v. Cartwright*, 230 F. Supp. 873 (MD, 1964).

²⁰ McCrary et al., “Alabama,” p. 46.

more painfully aware of every passing day,” as there was now “a concerted desire and a campaign to register Negroes en masse, regardless of the fact that many of them ordinarily cannot qualify because of their criminal records, or criminal attitudes, because of the fact that they are illiterate and cannot understand or pass literacy tests.” According to Mizell, it had “occurred to a great many people, including the legislature of Alabama, that to protect the white people of Alabama, that there should be numbered place laws.”²¹

c. Reapportionment, Redistricting, and the Voting Rights Act

Another tool used to deny Black citizens equitable access to the franchise has been the racial gerrymander. In 1960 Alabama state Senator Sam Engelhardt orchestrated the state’s first modern attempt to use the racial gerrymander to disenfranchise Black citizens. Engelhardt was a large landowner from Macon County who lamented the possibility of Black electoral success by asking rhetorically, “If you had a nigger tax assessor, what would he do to you?” He purported to enter politics for the sole purpose of keeping Black tenant farmers from “stealing his property.”²² Engelhardt

²¹ Quoted in *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1357, MD, 1986.

²² *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); Engelhardt also argued that “Desegregating the schools will lead to rape!” He added, “Damn niggers stink. They’re unwashed. They have no morals; they’re just animals. The nigger is depraved! Give him the opportunity to be near a white woman, and he goes berserk!” The conclusion: “The nigger isn’t just a dark-skinned white man.

sponsored a bill that passed the state legislature that redrew the boundaries of the city of Tuskegee, home to the prestigious Tuskegee Institute and a seedbed of Black activism, to exclude nearly every single Black voter, and no white voters, from the city limits. Black plaintiffs brought suit and lost at trial, but the decision was reversed by the Fifth Circuit and the Supreme Court, which found that the gerrymander served no legitimate purpose beyond its being “used as an instrument for circumventing a federally protected right” (*Gomillion v. Lightfoot*, 364 U.S. 339, 347, 1960).

The 1960 Census was the first in American history in which respondents could select their own race; it had been determined by census-takers prior to that time. When the 1960 data was published, Alabama was revealed to have lost a seat in its Congressional delegation. The state faced the necessity of redistricting for the U.S. House under the shadow of *Gomillion*. And yet the state legislature failed to pass a such a plan. Nor did the state pass any plan to redraw its state legislative districts. Indeed, despite a directive in the state constitution, Alabama had not once since 1901 reapportioned its legislature to account for population growth and shifts. With the urbanization that had taken place since the constitution was adopted, and especially since the end of World War II, this meant that white legislators from majority-Black rural areas, namely in the Black Belt, held a disproportionate share of seats in the state legislature. When the U.S.

He’s a separate individual altogether.” Bagley, *Politics of White Rights*, pp. 19, 213

Supreme Court handed down *Baker v. Carr* in 1962, declaring reapportionment a justiciable issue, white Democrats from urban areas in Alabama filed *Sims v. Frink*. In the first of several rulings under the *Sims* mantle, a three-judge court decided to give the Alabama legislature a chance to rectify that situation on its own without further action on the court's part.²³

The state submitted two state legislative plans that summer. Of these the court wrote, "We find that each . . . when considered as a whole, is so obviously discriminatory, arbitrary, and irrational that it becomes unnecessary to pursue a detailed development of each of the relevant factors of the [invidiousness] test" (*Sims v. Frink*, 208 F.Supp. 431, 437, MD). The court allowed for elections to be held that fall using a temporary plan that incorporated those elements of each state plans that did "correct a few of the most glaring discriminations" (440). In that same cycle, congressional elections in Alabama were held fully at-large for the first time since before the Civil War; the state legislature had failed still to pass a congressional

²³ *Baker v. Carr*, 369 U.S. 186 (1962); *Sims v. Frink*, 205 F.Supp. 245 (MD, 1962); *Reynolds v. Sims*, 377 U.S. 533 (1964); Anna Brown, "The changing categories the U.S. census has used to measure race," Pew Research Center, Feb. 25, 2021, <https://www.pewresearch.org/fact-tank/2020/02/25/the-changing-categories-the-u-s-has-used-to-measure-race/>.

redistricting plan following the state's loss of a seat in the House.²⁴

The state Supreme Court held that all ballots in the 1962 congressional election had to include a full slate of 8 choices, essentially adding an anti-single shot provision. This came amid a rising Republican challenge.

White Democrats in the South had begun, at a minimum, to support Republican candidates for President and, increasingly, switch parties altogether as part of a backlash against the Kennedy administration's actions – namely, sending federal troops to support the desegregation of the University of Mississippi and other fledgling measures in support of a growing civil rights movement. They nonetheless carried all 8 seats in the Alabama congressional election that year. The odd man left out of the Democratic slate was veteran lawmaker Frank Boykin of Mobile, representing the old 1st District wherein there were a “substantial number” of voters of the “so-called minority bloc,” meaning Black voters.²⁵

When the Supreme Court decided the appeal in the *Sims* case in 1964, it handed down its landmark one-person/one-vote ruling, styled *Reynolds v. Sims*. Alabama was again given a chance to correct its

²⁴ *Montgomery Advertiser*, Jan. 10, 1962; *Huntsville Times*, June 8, 1962; *Birmingham News*, May 27, 1962; *Anniston Star*, Feb. 4, 1962.

²⁵ *Birmingham News*, Nov. 4, 1962, Aug. 3, 1963; *Montgomery Advertiser*, Dec. 27, 1962.

malapportioned state legislative scheme. A three-judge court the following year found the plan for the state Senate permissible but held that the plan for the state House contained numerous districts with wide population variances with no rational basis but “preventing the election of a Negro House member” (*Sims v. Baggett*, 247 F.Supp. 96, 109, MD, 1965). The court afforded great weight to the historical context, writing, “The House plan adopted by the all-white Alabama Legislature was not conceived in a vacuum. If this court ignores the long history of racial discrimination in Alabama, it will prove that justice is both blind and deaf” (*Sims v. Baggett*, Id.).

Lyndon Johnson signed the Civil Rights Act into law that same year, accelerating white flight to the Republican Party at a time when Alabama’s public schools were being desegregated by way of litigation for just the second school year. Also that year, the U.S. Supreme Court decided *Wesberry v. Sanders*, wherein it held Georgia’s 5th Congressional District to be malapportioned, applying the principles in *Baker* and *Reynolds* to congressional redistricting. Alabama finally passed a congressional redistricting plan in a special session that year. Some had pushed for maintaining the at-large election of the delegation, but with numbered posts; this was the impetus for the Mizell plea in the Executive Committee meeting – warning that voters could “put a scallowag [Republican] or Negro in there” – that became central to the *Dillard* litigation years later. White flight to the Republican Party had accelerated in response to the Johnson

administration's actions, and Republicans took 5 of the 8 seats under the newly enacted district plan.²⁶

The following year, 1965, in the aftermath of "Bloody Sunday" in Selma, the Voting Rights Act ("VRA") became law. At that time, 19 percent of Alabama's Black voting-age population was registered to vote, compared to 69 percent of the white voting-age population. That seemed destined to change with the VRA's prohibition on literacy tests, poll taxes, and other devices that would deny or abridge minority groups' access to the franchise. The CRD immediately sought a judgement striking down Alabama's poll tax, which Circuit Judge Richard Rives described as "one of the last great pillars of racial discrimination" (*United States v. State of Alabama*, 252 F. Supp. 95, 96, MD, 1966).

Section 5 of the VRA covered Alabama, meaning that, in order to make any changes to election law, including redistricting, the state needed to seek "pre-clearance" from the Attorney General (effectively the CRD and Assistant Attorney General for Civil Rights). The Attorney General soon registered objections when Alabama localities tried to require voters to sign poll lists in order to access voting machines. And the CRD sought to block, by way of litigation, Alabama officials' efforts to "freeze" in office those "who were elected when Negroes were being illegally deprived of the right to vote," while also "freez[ing] Negroes out of the

²⁶ Reynolds v. Sims, 377 U.S. 533; Wesberry v. Sanders, 376 U.S. 1.

electorate” (*Sellers v. Trussell*, 253 F. Supp. 915, MD, 1966). Within a year of the VRA’s passage, 107,000 Black voters registered in the state, pushing Black voter registration to nearly 60 percent by the end of the decade, even as white registration increased apace, reaching nearly 90 percent by the same time.

Black leaders sought to capitalize and to organize. In 1968, Huntsville dentist John Cashin formed the National Democratic Party of Alabama (NDPA) which, that fall, ran several candidates in races across the Black Belt. But the names of the NDPA candidates were left off of the ballot or they were disqualified, either by way of new statutes designed for that purpose or by way of discriminatory use of existing statutes, both of which actions were subsequently enjoined by federal courts. NDPA candidates then won local elections in four Black Belt counties, and Fred Gray and Thomas Reed of Tuskegee, running as Democrats, became the first Black members of the state legislature since Reconstruction. Across the state, 23 Black candidates were elected to local bodies.²⁷

²⁷ Hadnott v. Amos, 394 U.S. 358 (1969); Jerris Leonard, Assistant Attorney General, Civil Rights Division, to MacDonald Gallion, Attorney General of Alabama, Aug. 1, 1969, CRD Voting Determination Letters; *New York Times*, Feb. 8, May 16, June 3, 1970; *Alabama Journal*, Nov. 27, 1970; Matthew Edmonds, “The National Democratic Party of Alabama,” *Encyclopedia of Alabama*, May 1, 2008, Sept. 20, 2018, <http://www.encyclopediaofalabama.org/article/h-1518>; The NDPA continued to weather attempts by the legislature to bar it from full participation in politics; see e.g. Wm. Bradford Reynolds to Honorable Charles Graddick, May 6, 1976, CRD Voting Determination Letters (attempt

With data from the 1970 census, the state legislature assumed its responsibility under the *Sims* decision to equitably reapportion and redistrict the state House and Senate. The court found the plans the state submitted to be “unacceptable since, in conjunction with their discriminatory effect, they fall considerably short of guaranteeing to each citizen of Alabama that his vote ‘is approximately equal in weight to that of any other citizen in the State’” (*Sims v. Amos*, 336 F. Supp. 924, 936, MD, 1972).²⁸ The court ordered the implementation of the plaintiffs’ plan, but it first gave the legislature another chance to produce a viable plan of its own. It submitted one in the spring of 1973, but the court rejected that plan as well. The court noted that a legislative floor leader for Governor George Wallace had instructed the reapportionment committee to take advantage of maximum-allowable deviations

to change date, time of primaries to stifle use of conventions to nominate).

²⁸ The CRD that year blocked two state laws that would have limited assistance to illiterate voters in municipal elections and another that would have increased the number of signatures necessary for candidates to qualify to run as independents, in a plain effort to limit the ability of groups like NDPA to get candidates on the ballot. See Acts Nos 2229 and 2230, Alabama Legislative Acts, 1971, Organizational, Special, and Regular Sessions, Volume 5, pp. 3586-87, ADAH Digital Collections, <http://digital.archives.alabama.gov/cdm/compoundobject/collection/legislature/id/145593/rec/1>; David Norman, Assistant Attorney General, Civil Rights Division, to Leslie Hall, Assistant Attorney General, Alabama, April 4, 1972, and David Norman, Assistant Attorney General, Civil Rights Division, to William J. Baxley, Attorney General, Alabama, Aug. 14, 1972, CRD Voting Determination Letters.

from one-person, one-vote. When the court ordered the implementation of plaintiffs' plan, Wallace himself called it "a most onerous and burdensome albatross around the necks of the people of Alabama." The following fall, Black voters were able to elect 13 preferred candidates to the state legislature.²⁹

While 1973 marked the culmination of the *Sims* litigation, it marked only the beginning of redistricting battles. After the 1980 census, the legislature submitted its state House and Senate plan for preclearance, and the CRD concluded that if precleared and implemented, the plan would lead to "a retrogression in the position of black voters" through "unnecessary reconfiguration" in Jefferson County and in the Black Belt.³⁰ Black leaders in the state, meanwhile, filed suit seeking a preliminary injunction in advance of the September primaries. The court allowed the legislature to attempt to pass a constitutional plan via special session, but the CRD found the plan it produced to be objectionable due to the unnecessary cracking of Black communities in Jefferson County. The court in *Burton*

²⁹ *Sims v. Amos*, 336 F.Supp. 924, 930-41 (MD, 1972); Act No. 3, Alabama Legislative Acts, 1973, Special and Regular Sessions, Volume 1, p. 6, ADAH Digital Collections, <http://digital.archives.alabama.gov/cdm/compoundobject/collection/legislature/id/147440/rec/6>; *Montgomery Advertiser*, Aug. 4, 1973; *Selma Times-Journal*, Aug. 6, 1973; *Alabama Journal*, Aug. 4, 1973; *Birmingham News*, May 2, 5, 8, 1974, Nov. 6, 7, 1974; *New York Times*, Dec. 4, 1974.

³⁰ William Bradford Reynolds, Asst. Attorney General, to Charlie Graddick, Attorney General of Alabama, May 6, 1982, CRD Section 5 Rejection Letters, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-1520.pdf>.

v. Hobbie ordered the implementation of modifications for Jefferson County submitted by plaintiffs on an interim basis for that fall.³¹

The Attorney General's Section 5 objection rendered the plan as set out by the legislature legally unenforceable, so the court had not ruled on the merits of the plaintiffs' original claims. It had given the legislature yet one more chance to enact a plan that could pass muster, under the specter of Senate hearings on amending Section 2 of the Voting Rights Act to include the discriminatory results standard in response to the Supreme Court's decision in *City of Mobile v. Bolden*.

In 1983 Act No. 83-154 passed the Alabama legislature and was precleared. The court ordered its use in special elections that fall, refusing, in its words, "to approve a settlement which would result in the continuation in office for four years of legislators who were not elected under a valid reapportionment plan" (*Burton v. Hobbie*, 561 F.Supp. 1029, 1036, MD). Judge Johnson quoted Judge Rives, who had written previously in *Dent v. Duncan*, "I look forward to the day when the State and its political subdivisions will again take up their mantle of responsibility, treating all of their citizens equally, and thereby relieve the federal government of the necessity of intervening in their affairs." Johnson observed in *Burton*, "Despite the repeated

³¹ *Burton v. Hobbie*, 543 F.Supp. 235, 236-39 (MD, 1982); *Montgomery Advertiser*, June 9, 13, 1982; *Anniston Star*, June 10, 1976; Blacksher, et.al., "Voting Rights in Alabama," pp. 271-273.

efforts of this Court, the Alabama Legislature has failed to enact a valid reapportionment plan for over eighty years. The day has finally arrived” (Id).³²

In the November election, Black citizens gained two seats each in the state House and Senate, bringing their numbers to 19/105 in the House and 5/35 in the Senate. The Court soon thereafter handed down *Gingles I*, adopting the Senate Factors I use for guidance in this report. By that time, the CRD had sent federal observers to Alabama 107 times and had registered 59 objections to proposed changes in state or local election law.³³

That same year, 1986, Judge Thompson issued the court’s ruling in *Dillard* (649 F Supp. 289, MD). The principle target of the lawsuit was the numbered place law, which in conjunction with at-large elections, staggered terms, and majority vote requirements, served to deny Black citizens across the state an equitable chance to elect candidates of their choice. Judge Thompson cited, among other evidence, the comments of Frank Mizell, who insisted that numbered place laws were needed to “protect the white people of Alabama,” as proof of discriminatory intent. The Court recognized that at-large systems themselves were

³² Burton v. Hobbie, 543 F.Supp. 235, 238-40 (MD, 1982), and 561 F. Supp. 1029, 1032-35 (MD, 1983); *Montgomery Advertiser*, Feb. 2, 1983; *Anniston Star*, Nov. 9, 1983; Blacksher, et.al., “Voting Rights in Alabama,” pp. 271-73.

³³ James Blacksher, et al., “Voting Rights in Alabama, p. 253; Peyton McCrary, “History in the Courts,” pp. 47-65; McCrary et al., “Minority Representation in Alabama,” p. 414.

relics of the redemption period and that, in the 1950s and 1960s, these new elements like numbered post requirements were added to strengthen those systems and to deny victories to Black candidates. Inspired by a statewide structural injunction that had been issued in the *Lee v. Macon* school desegregation litigation (discussed *infra*), plaintiffs in *Dillard* sought similar relief. *Dillard* would eventually compel 183 local governments (17 county commissions, 28 county school boards, and 144 cities) to discard at-large systems for single-member district plans, though some at-large electoral schemes have only recently been discarded by federal courts (see *Jones v. Jefferson County*, No. 2:19-cv-01821-MHH, ND, 2019, and *Alabama State Conf. of the NAACP v. City of Pleasant Grove*, No. 2:18-cv-02056, ND, 2019).³⁴

Throughout the 1980s and into the 1990s, the CRD continued to register Section 5 objections to numerous proposed changes in state and local election law in Alabama. The types of changes that failed to receive preclearance included a court-packing scheme, changes in candidate qualification and nomination procedures, changes in voter registration procedures, voter roll purges, changes in voter identification requirements, the addition of at-large seats on top of district schemes, racially motivated municipal

³⁴ *Anniston Star*, Aug. 27, 1986; *Selma Times-Journal*, June 25, 1989; Consent Order, *Taylor v. Jefferson County Commission*, No. 84-C-1730 (ND AL, Aug. 17, 1985); “White minority wins right to challenge at-large voting,” *Chicago Tribune*, June 18, 1988; Blacksher, et.al., “Voting Rights in Alabama, 1982-2006,” pp. 259-260.

severances, and racially selective annexations intended to protect white majorities. The City of Pleasant Grove (which was created for the purpose of white exclusivity and which attempted unsuccessfully to secede from the Jefferson County school system for the same purpose) challenged CRD objections to its racially discriminatory annexations and sought a declaratory judgment in the D.C. Circuit Court. The claim was denied, with the Supreme Court upholding in 1987. The following year, a trial court found that a state law, which required any voter seeking assistance “swear an oath to the inspectors that he or she is unable to write the English language” and which limited voters to 5 minutes in the voting booth, “continue[d] . . . to have substantial adverse effects on the black citizens of this state” (*Harris v. Siegelman*, 695 F. Supp. 517, 528, MD).³⁵

d. Redistricting since the 1990s Cycle

After the 1990 Census was published, Black plaintiffs brought suit challenging Alabama’s legislative redistricting plan. The state ultimately negotiated a consent decree in circuit court after a federal trial court certified a question to the state Supreme Court

³⁵ *City of Pleasant Grove v. United States*, 623 F. Supp. 782, DDC 1985, affirmed 479 U.S. 462, 1987; Blacksher, et.al., “Voting Rights in Alabama, 1982-2006,” pp. 255-58, 268-69; CRD Voting Determination Letters; *Montgomery Advertiser*, April 12, 1984.

regarding venue.³⁶ At the same time, the state legislature, then still controlled by white Democrats, submitted its congressional redistricting plan to the CRD, and the Attorney General objected. The CRD had determined that the legislators were cracking Black population centers due to “a predisposition on the part of state political leadership to limit black voting potential to a single district,” while hiding behind the idea that the state was prioritizing a lack of retrogression by creating the one majority-Black district and packing it with Black voters. Assistant Attorney General John R. Dunne wrote, “The proposed plan provides for one such district based on black population concentrations in Jefferson County, Montgomery County and intervening areas. The remainder of the state’s concentrated black population, however, is fragmented under the submitted plan among a number of districts none of which has a black population of as much as 30 percent.”³⁷

A white realtor in Mobile brought suit against the plan under a one-person/one-vote claim, and Black voters joined the suit as plaintiff-intervenors with a Section 2 claim, citing specifically the lack of a second majority-Black congressional district. The court in *Wesch v. Hunt* was compelled to order the

³⁶ *Brooks v. Hobbie*, 631 So.2d 883 (Ala., 1993); *Peters v. Folsom*, CA 93-T-124-N (MD) and *Brooks v. Camp*, CA 93-T-364-N (MD), consolidated, dismissed.

³⁷ John R. Dunne, Assistant Attorney General, to Jimmy Evans, Attorney General, March 27, 1992, CRD Voting Determination Letters.

implementation of a plan, choosing from several that had been considered by the newly created Permanent Committee on Reapportionment and Redistricting and submitted to the court, while adding the court's own modifications. A modified version of the "Pierce Plan" was adopted for Congressional elections that year, and the 7th District was created with a 65 percent Black majority of registered voters. The court in *Wesch* did not consider any analysis of racially polarized voting in the district, nor did it consider the "preconditions" established in *Gingles* or the totality of the circumstances.³⁸

The Pierce Plan was originally the Larry Dixon Plan. Dixon was a white legislator who would later be recorded on tape making blatantly racist remarks directed against Black voters.³⁹ White lawmakers had acceded to the necessity that one Congressional district would have to be majority-minority, and all

³⁸ *Wesch v. Hunt*, 785 F. Supp. 1491, 1495-99 (SD, 1992), affirmed sub nom. *Camp v. Wesch*, 504 U.S. 902 (1992); Blacksher, et.al., "Voting Rights in Alabama, 1982-2006," pp. 273-75.

³⁹ A federal investigation in 2010 revealed an effort to keep a gambling referendum off of the 2010 ballot in order to limit Black voter turnout. Dixon was recorded saying, "Just keep in mind if [the gambling] bill passes and we have a referendum in November, every black in this state will be bused to the polls. And that ain't gonna help." Dixon added, "Every black, every illiterate" will be "bused on HUD financed buses" with free food provided. Dixon was also a chief sponsor of the state's voter photo ID law, which he argued would undermine the "black power structure" since the absence of such a law "benefits black elected leaders." *Anniston Star*, April 2, 2010; *Montgomery Advertiser*, June 19, Nov. 16, 2011.

parties to the litigation had stipulated to as much. Birmingham's Earl Hilliard became the first Black representative from Alabama to sit in the U.S. Congress since Reconstruction when he was elected to represent the 7th District. That seat has subsequently been held by Artur Davis and Terri Sewell. These three represent the only Black Alabamians to serve in Congress since Reconstruction.

After the 2000 Census, the first in which Americans could choose more than one race to identify themselves, the legislature, then still under white Democratic control, failed in regular and special sessions to pass a viable Congressional redistricting plan.⁴⁰ Three separate actions challenging the failure were filed and consolidated, and the state was forced to acknowledge that it was malapportioned. A three-judge court invited the submission of plans from all parties, heard expert witness testimony, and even appointed two experts of its own, when the parties could not agree on any, to assist the court in what it admitted was extremely complex litigation. While that trial was

⁴⁰ The 2020 Census, for the first time, allows respondents to clarify their heritage by not just choosing white or black, but by adding information about their origin. This is important as the state of Alabama, and white society in general, have by law and custom long considered anyone with African heritage to be "Negro" or Black. *See, e.g.*, Ala.Const. Art. IV, § 102 ("The legislature shall never pass any law to authorize or legalize any marriage between any white person and a negro, or descendant of a negro.") repealed by Amend. 667. Historically, and today, people with African ancestry self-identify and are categorized by society as "Black," not white, despite the reality that, since slavery, most Black Americans are mixed race.

ongoing, the legislature passed a plan for Congressional redistricting and submitted it for preclearance. The court hearing the consolidated cases deferred to the Justice Department and the state and, rather than enter an injunction or rule on the merits of the state's plan, awaited a preclearance ruling, which came in March of 2002. The legislature passed redistricting plans for state house and senate districts and state board of education districts that were precleared along with the Congressional plan. Despite calls from Black legislators to create a second majority-Black congressional district, the plan adopted by the legislature maintained only one such district.⁴¹

The Republican Party had begun siphoning local white Democrats and isolating Black elected officials and voters in the Democratic Party in the 1990s. White flight from the Democrats in presidential elections dated back at least to the Dixiecrats of 1948 if not the New Deal, but white voters remained loyal to the Democratic Party, in large part because George Wallace remained a dominant political force into the 1980s and never switched parties. Wallace retired in 1987, however, and was succeeded by Republican Guy Hunt. George Bush carried the state against Bill Clinton in 1992. In 1996, the GOP swept statewide elections. U.S. Senator Richard Shelby switched parties in 1998. Between the redistricting battles of the early 2000s and the end of the decade, Republican leaders began

⁴¹ Douglas v. Alabama, No. 01-D-922-N (MD), order dismissing consolidated Congressional cases as moot, Apr. 29, 2002; *Montgomery Advertiser*, Jan. 29, 30, March 5, 2002.

pressuring the remaining white Democrats, the so-called “Blue Dogs,” to switch parties. The culmination of these efforts was the 2010 Republican takeover of the Alabama legislature after 136 years of Democratic Party rule.⁴²

Republicans gained supermajorities in the state House and Senate, leading Senate President Pro-Tem Del Marsh to observe, “We are in the majority and in a position, if we have to, to run over people.” It was those supermajorities that would oversee redistricting in the spring of 2011. White lawmakers had no need or incentive to bargain with Black Democrats. And if they could win at the ballot box, they would inherit, wholesale, the limited Congressional representation plan that provided for only one majority-minority district. After the 2010 elections, most white politicians in Alabama were Republican, and very nearly every Black politician a Democrat.⁴³

⁴² Wayne Flynt, *Alabama in the Twentieth Century* (Tuscaloosa: University of Alabama Press, 2004), pp. 102-4; Merle Black and Earl Black, *The Rise of Southern Republicans* (New York: Belknap Press of Harvard, 2002), pp. 314-15; *Montgomery Advertiser*, March 14, Nov. 6, 2008, Aug. 23, Oct. 8, Nov. 14, 2010; *Anniston Star*, Aug. 1, 2008; *Alabama Journal*, Nov. 5, 1962.

⁴³ *Montgomery Advertiser*, Nov. 3, 2010, May 1, 2011; al.com and Mobile Press-Register Staff, “Republicans claim majority in Alabama House and Senate for 1st time in 136 years,” Al.com Nov. 3, 2010, https://www.al.com/live/2010/11/republicans_historic_alabama_majority.html; Camille Corbett, “Hubbard reflects on GOP takeover,” *The Crimson White*, Oct. 23, 2012, <https://cw.ua.edu/13191/news/hubbard-reflects-on-gop-takeover/>.

Redistricting following the 2010 census was highly acrimonious. White Republican legislators made up a supermajority of the 22-member Permanent Joint Legislative Committee on Redistricting: 16 members were Republicans, and 6 members were Democrats. Black legislators insisted that this was not fair representation and proposed instead a nonpartisan appointed commission, but this proposal was rejected.⁴⁴ The committee was co-chaired by Senator Gerald Dial and then-Representative Jim McClendon, both white Republicans. The committee chairs held public hearings, ostensibly allowing for citizens' input, while the actual work of drafting a plan was farmed out, behind-the-scenes, and with minimal input from anyone, to attorney Dorman Walker, Georgia political consultant Randy Hinaman, and the late Thomas Hofeller, another consultant who has been called a "gerrymander whiz" and who worked on several redistricting plans that have been cited in state and federal courts as being racially gerrymandered.⁴⁵

⁴⁴ Tim Reeves, "Congressional Redistricting: Piece by Piece," *Selma Times-Journal*, May 10, 2011.

⁴⁵ Michael Wines, "Republican Gerrymander Whiz Had Wider Influence Than Was Known," *New York Times*, Sept. 10, 2019, <https://www.nytimes.com/2019/09/10/us/republican-gerrymander-thomas-hofeller.html>; Wines and Richard Fausset, "North Carolina's Legislative Maps Are Thrown Out by State Court Panel," *New York Times*, Sept. 3, 2019, <https://www.nytimes.com/2019/09/03/us/north-carolina-gerrymander-unconstitutional.html>; David Daley, "The Secrets of the Master of Modern Republican Gerrymandering," *The New Yorker*, Sept. 6, 2019, <https://www.newyorker.com/news/news-desk/the-secret-files-of-the-master-of-modern-republican-gerrymandering>.

State Senator McClendon and Hofeller corresponded, in Sen. McClendon's case via private email account, on redistricting matters. These included a draft, which Hofeller edited, of the reapportionment committee's guidelines and the relevant racial data needed to draw the maps to the maximum benefit of white Republicans. Sen. McClendon later critiqued longtime state Senator Jimmy Holley, saying in an email that Holley was "bound and determined" to hold public hearings. Sen. McClendon also arranged a meeting between Hofeller, himself, and then Attorney General Luther Strange to discuss districts for the state board of education. Walker also communicated with Hofeller, commending his work in making changes to the committee guidelines document, under the email subject line "Confidential and Privileged Alabama Guidelines"; Walker added his own changes and emailed those back to Hofeller, Hofeller's associate John Odlham, and John Ryder, who was at that time serving as general counsel for the Republican National Committee. None of the members of the reapportionment committee were included in any of this correspondence. When asked to comment on his correspondence with Hofeller, Sen. McClendon said, "Knowing that everything is going to show up in court, then you have to be very thoughtful about what you say. For that reason. I don't say much."⁴⁶

⁴⁶ Brian Lyman, "Report: GOP redistricting expert was in touch with Alabama legislator, attorney," *Montgomery Advertiser*, Sept. 24, 2019, <https://www.montgomeryadvertiser.com/story/news/2019/09/24/documents-gop-redistricting-expert-touch-alabama->

Sen. McClendon denied any recollection of the correspondence with Hofeller, though no one has denied that most of the work done in actually drafting the plans and making adjustments was handled by Walker and Hinaman. McClendon has explained, “The strategy was very simple, and it was understood by everybody. It was pretty commonplace. We did this for congressional districts and we did this for House districts. We drew minority districts first. That’s how you guarantee they get to keep what they’ve got.” This seems to underscore that the primary concern of avoiding retrogression in terms of majority-minority districts, allowing “they” – Black voters – to “keep what they’ve got.” Sen. McClendon in 2019 stated that Black people accounted for about 25 percent of the state’s population, and “25 percent of our legislators are blacks. Are you getting the picture here? Yeah. So. Okay. What do you want?”⁴⁷

The map initially approved by the committee was introduced into the house by McClendon but was rejected. Meanwhile, the committee plan was introduced into the senate, only to meet concerted opposition there

legislator-attorney/2430518001/; David Daley, “GOP Racial Gerrymandering Mastermind Participated in Redistricting in More States Than Previously Known, Files Reveal,” *The Intercept*, Sept. 23, 2019, <https://theintercept.com/2019/09/23/gerrymandering-gop-west-virginia-florida-alabama/>.

⁴⁷ Eddie Burkhalter, “Gerrymandering expert worked with Alabama Republicans on 2011 redistricting lines, documents show,” *Alabama Political Reporter*, Sept. 24, 2019, <https://www.alreporter.com/2019/09/24/gerrymandering-expert-worked-with-alabama-republicans-on-2011-redistricting-lines-documents-show/>.

as well. Legislators from Montgomery County, including some of the very few remaining white Democrats, opposed splitting the county among three districts. Black Democrats argued that the plan packed Black voters into the 7th District, especially by moving the almost exclusively Black portion of western Montgomery County into the 7th District and then cracking Black voters in heavily-white remaining districts. Sen. Bobby Singleton observed flatly, “I think it’s political packing.” The perennial population loss of the western Black Belt allowed the map-makers to excuse the packing by citing the necessity of upholding the one-person/one-vote principle.⁴⁸

After debate in the Senate was cut off via a cloture vote, Sen. Scott Beason, a white Republican and another lawmaker recorded on tape making racist remarks, introduced an augmented version of the committee plan, with adjustments he had made to his own district.⁴⁹ When Democrats protested this irregularity – introducing a bill after debate had been terminated – then-Lieutenant Governor Kay Ivey allowed for three minutes of debate. After those three minutes, a vote was held, and the bill passed out of the senate. Black Democrats continued to protest but were cut off

⁴⁸ *Montgomery Advertiser*, May 27, June 1, 3, 2011.

⁴⁹ During a pay-for-play investigation conducted by the FBI, Beason wore a wire and captured himself referring to Black Belt Black citizens as “aborigines.” Kim Chandler, “Sen. Scott Beason apologizes for comments revealed during bingo trial (video),” *al.com*, Sept. 27, 2011, https://www.al.com/spotnews/2011/09/sen_scott_beason_apologizes_fo_html.

by Ivey. Senator Roger Bedford, a Black Democrat, called it a “back-room deal.” Sen. Quinton Ross, also a Black Democrat, said, “Nothing about their plan was transparent.”⁵⁰

The House then approved a plan introduced by Representative Micky Hammon, a white Republican, that essentially restored the committee plan, leaving out the Beason adjustments. Black members of the House, including James Busky, made the same protestations as their colleagues in the senate – the plan packed Black voters into the 7th and cracked them everywhere else. Busky argued, “That’s stacking blacks in a congressional district [and] there’s no need to do it.” Busky introduced a plan that would have placed some Black voters from the 7th into the 2nd District, but it failed along party lines. The bill that was finally approved, out of a six-member conference committee, essentially adopted the Hammon Plan, and therefore produced a map preserving the basic characteristics of the Larry Dixon Plan, as modified by Walker and Hinaman. It was signed by Governor Robert Bentley on June 8, 2011.⁵¹

The legislative Black Caucus and the state Democratic Conference challenged the state’s plan as discriminatory, and a federal court took up the issue. Alabama Attorney General Luther Strange, after consulting with Sen. McClendon, asked a three-judge federal court in Washington D.C. to approve the plan,

⁵⁰ *Selma Times-Journal*, May 31, 2011.

⁵¹ *Montgomery Advertiser*, June 1, 2, 3, 9, 2011.

bypassing Section 5 administrative review under the Obama Administration Justice Department and likely with awareness that other relevant litigation was pending. A suit had been brought by officials in Shelby County, Alabama, seeking the end of Section 5 preclearance. The leader of the Alabama Democratic Conference, Joe Reed, argued that the state, in going to the court, was trying to fast-track preclearance in order make it harder for people to register opposition, particularly to the fact that a map could have been drawn that included either two majority-Black districts or at least 1 majority-Black district and one “opportunity” district. Two months later, and one day before the trial court upheld Section 5 in *Shelby County v. Holder*, the Attorney General precleared the state’s congressional plan. This severed that issue from the *Alabama Legislative Black Caucus* case, which moved forward in a contentious battle over the state’s legislative districts, the maps for which were drawn by Hinaman. Twelve of those districts were determined by the court to be unconstitutionally gerrymandered. The trial court ultimately approved the state’s plans in 2017.⁵²

⁵² State of Alabama v. Holder, No. 1:11-cv-01628, Complaint filed (DC CCA), September 9, 2011; *Anniston Star*, Sept. 20, Dec. 21, 2011; *CNN*, “Justice Department approves congressional redistricting for Alabama,” Nov. 21, 2011, <https://www.cnn.com/2011/11/21/us/alabama-redistricting/index.html>; *Alabama Legislative Black Caucus v. Alabama*, 989 F.Supp.2d 1227 (MD, 2013), vac. 135 S. Ct. 1257 (2015); *Alabama Legislative Black Caucus v. Alabama*, 231 F.Supp.3d 1026 (MD, 2017).

III. FACTOR 5: EFFECTS OF PAST DISCRIMINATION

Education, income, health, and legal vulnerability adversely affect political participation. Black Alabamians still suffer under the socioeconomic weight of that past and from continuing racism, even at the highest levels of government.⁵³ As the court acknowledged in *Alabama State Conference of the NAACP v. Alabama* in 2020, “Though things have changed, the effects of . . . discrimination persist to some degree” (CA 2:16-cv-00731-WKW-SMD, Feb. 5, 2020, MD, pp. 153-54). Black citizens in Alabama lag behind their white counterparts in nearly every statistical socioeconomic category, due largely to a history of discrimination, only elements of which are sketched above. When Congress amended Section II of the VRA, amid the apportionment fight that immediately preceded the adoption of the Dixon Plan, the 11th Circuit recognized the impact that a century of discrimination had on Black Alabamians. In doing so, the court quoted the Senate Report from which the *Gingles* Senate Factors were derived:

The courts have recognized that disproportionate educational, employment, income level, and living conditions arising from past discrimination tend to depress minority political participation. . . . Where these conditions

⁵³ In 2011, the court in *United States v. McGregor* acknowledged that “racist sentiments . . . remain regrettably entrenched in the high echelons of [Alabama] state government” (824 F. Supp. 2d 1339, 1344-1348, MD).

are shown, and where the level of black participation is depressed, plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation.⁵⁴

Today, white Alabamians with more education and therefore higher income can afford a car, internet service, a personal computer, or a smart phone; they can take time off from work; they can afford to contribute to political campaigns; they can afford to run for office; they have access to better healthcare. Education has repeatedly been found to correlate with income independently affects citizens' ability to engage politically. Black people in Alabama are demonstrably poorer, less educated, less healthy, and far more likely to be incarcerated than white people as a consequence of past and continuing racism and discrimination. According to the most recent available data from the U.S. Census Bureau's American Community Survey, Black Alabamians are less likely to have completed high school, more likely to live below the poverty line, more likely to be unemployed, more likely to work in a service industry job, more likely to rent rather than own their home, more likely to lack access to a vehicle, and more likely to have a significantly lower median household income than white households. These realities are inseparable

⁵⁴ Senate Report, quoted in *U.S. v. Marengo Co. Comm.*, 731 F.2d 1546, 1568-70 (1984).

from, and in significant part result from, the state’s history of official discrimination.⁵⁵

a. Health, Employment, Criminal Justice

As the court observed in *People First v. Merrill* in 2020, “people who are Black, Latinx, or Native American are more likely to hold jobs that do not provide paid leave, cannot be performed remotely, and require more exposure to the public and, therefore, to COVID-19.” The parties to that action stipulated to the fact that “the discrimination and systemic racism that contribute to elevated COVID-19 risk for Black people and other minorities nationally are evident in Alabama,” wherein COVID-19 has also had a disproportionate impact on Black people in Alabama in terms of rate of infection and rate of death due to, in the words of the court, “pre-existing and evolving inequities in structural systems and social conditions.”⁵⁶ The

⁵⁵ U.S. Bureau of Census, American Community Survey Data Profiles, Alabama, 2018, <https://www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/2018/>.

⁵⁶ Findings of Fact and Conclusions of Law, C.A. 2:20-cv-00619-AKK (MD), pp. 15-16, ¶ 13-14. The *New York Times* published the results of a study, backed by input from healthcare experts, that found socioeconomic factors with historical roots – such as access to healthy food options, access to decent healthcare, inability to work from home, etc. – were causal factors in COVID-19’s more deadly effects on Black persons. Infectious disease experts at the Centers for Disease Control (“CDC”) also determined that “Long-standing systemic health and social inequities have put some members of racial and ethnic minority groups at increased risk of getting COVID-19 or experiencing severe illness, regardless of age.” According to the CDC, at the

court in *People First* also acknowledged that “due to patterns resulting from a history of housing discrimination, Black and Latinx individuals are more likely to live in areas impacted by environmental pollutants, or in densely populated areas.”⁵⁷ This includes areas in Alabama that have been designated as “Superfund” cleanup sites by the U.S. Environmental Protection Agency (“EPA”), which I discuss in more detail below.⁵⁸

The COVID-19 pandemic has also had a disparate impact on Black school children. When school systems were forced to go online, Black children in the Black Belt in Alabama and in the state’s urban areas were more likely to lack internet access or a computer, tablet, or smart phone, rendering them incapable of continuing in school. As a principal at a school in Perry

height of the summer surge in COVID last year, “age-adjusted hospitalization rates [were] highest among non-Hispanic American Indian or Alaska Native and non-Hispanic black persons, followed by Hispanic or Latino persons.” CDC figures indicated that the age-adjusted hospitalization rate for Black people was at that time “approximately 5 times that of non-Hispanic white persons.” Richard A. Oppel Jr. et al, “The Fullest Look Yet at the Racial Inequity of Coronavirus,” *New York Times*, July 5, 2020, <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html?action=click&module=Top%20Stories&pgtype=Homepage>; No Author, “COVID-19 in Racial and Ethnic Minority Groups,” Centers for Disease Control, June 25, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.

⁵⁷ Id.

⁵⁸ The North Birmingham neighborhood has been determined to be so polluted by industrial waste that the EPA can use specially designated funds to remove and replace toxic soil.

County explained, “Our district cannot afford to get devices for our students. And then the biggest thing is connectivity. No broadband.”⁵⁹ Many school systems across the state saw serious enrollment declines from 2019-2020 to school year 2020-2021. Most either stabilized or saw increases in enrollment from 2020-2021 to fall 2021-2022. All but one school system in the state that saw a 5 percent or greater continued loss of enrollment in that span are in the Black Belt; the other is Chickasaw City, which is an overwhelmingly Black system in greater Mobile.⁶⁰

Black people in the state also continue to face workforce discrimination, including on the part of the state. Of the 1,539 claims of discrimination brought before the Equal Employment Opportunity Commission in 2020 from Alabama, 45 percent were racially based claims, the highest percentage of any state in America. Alabama’s racially based claims accounted for 3.1 percent of national racial claims, although Alabama’s population accounts, as of the last Census, for only 1.5 percent of the national population.⁶¹ Litigation in the

⁵⁹ Nellie Peyton, “‘Who is standing up for us?’ – Black, rural students left behind as U.S. schools go online,” *Reuters*, Aug. 28, 2020, <https://www.reuters.com/article/us-health-coronavirus-usa-education-feat/who-is-standing-up-for-us-black-rural-students-left-behind-as-u-s-schools-go-online-idUSKBN25O1XR>.

⁶⁰ Trisha Powell Crane, “Alabama public schools shrunk by 6,000 students during pandemic,” *Al.com*, Nov. 16, 2021, <https://www.al.com/news/2021/11/alabama-public-schools-shrunk-by-6000-students-during-pandemic.html>.

⁶¹ U.S. Equal Employment Opportunity Commission, 2020 EEOC Charge Receipts for AL, <https://www.eeoc.gov/statistics/enforcement/>

last 50 years (and within the last ten years) has revealed numerous instances of racial discrimination in employment on the part of state entities – including the state Personnel Department and Personnel Board, the Department of Public Safety, the Alabama Cooperative Extension Service, the state Board of Education, and the state Department of Transportation – and also on the part of private employers.⁶²

Recent research also demonstrates that the wage gap between white and Black workers, long thought to have been closing in the last 50 years, has actually increased. Studies have considered those who have given up on finding work and the incarcerated, both disproportionately Black groups, among the wage-earning citizenry. According to various scholars, this more accurately measures the wage gap as a socioeconomic indicator. The studies indicate that, when including these groups, the wage gap between Black and white men has grown steadily since the 1980s, a time when

charges-by-state/AL; United States Census Bureau, Quick Facts, <https://www.census.gov/quickfacts/fact/table/US/PST045219>.

⁶² *United States by Wallace v. Frazer*, 317 F. Supp. 1079 (MD, 1970); *United States v. Dothard*, 373 F. Supp. 504 (MD, 1974); *Strain v. Philpott*, 331 F. Supp. 836 (MD, 1971); *Brown v. Alabama Department of Transportation*, 597 F. 3d 1160 (11th CCA, 2010); *Reynolds v. Alabama Department of Transportation*, 4 F. Supp. 2d 1068 (MD, 1998); *Allen v. Alabama State Board of Education*, 816 F.2d 575 (11th CCA, 1987), 976 F.Supp. 1410 (1997); *Shuford v. Alabama State Board of Education*, 897 F. Supp. 1535 (1995); *United States v. Jefferson County*, 2013 WL 4482970 (ND); *Ensley Branch, NAACP v. Seibels*, 31 F.3d 1548 (11th CCA, 1994); *Adams v. Austal USA*, 754 F.3d 1240 (11th CCA, 2014); *Ferrill v. The Parker Group*, 168 F.3d 468 (11th CCA, 1999).

white backlash against civil rights and other issues coalesced in the Reagan revolution.⁶³

Leaders in the city of Birmingham, most of them Black, attempted in 2016 to establish a minimum wage in the city higher than that of the federal minimum wage (Alabama has no minimum wage) to the rate of \$10.10/hour. The white-controlled state legislature responded by passing a bill preventing local governments from establishing minimum wages, thus invalidating the city's effort. State Sen. Linda Coleman-Madison, a Black Democrat, said at the time, "Alabama is a poor state. But I say we are poor by choice, because of bills like this that keep people poor." Black wage earners in the city are disproportionately beholden to white business owners. Recent studies have demonstrated that "Black residents make up 74% of Birmingham's population, but only 50% of businesses are Black-owned" and that "white residents make up 22% of the population, but 47% of businesses are white-owned."⁶⁴

⁶³ Patrick Bayer and Kerwin Kofi Charles, "Divergent Paths: A New Perspective on Earnings Differences Between Black and White Men Since 1940," *The Quarterly Journal of Economics*, 133.3 (Aug., 2018) pp. 1459-1501; Becky Pettit, *Invisible Men: Mass Incarceration and the Myth of Black Progress* (Russell Sage Foundation, 2012); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (The New Press, 2012); The Sentencing Project, "Fact Sheet: Trends in U.S. Corrections, U.S. State and Federal Prison Population, 1925-2017," <https://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>.

⁶⁴ Zachary Roth, "Birmingham Raises Minimum Wage and Alabama Takes it Away," *NBC*, Feb. 26, 2016, https://www_

Not only are Black men in Alabama more likely to find it difficult to get a job or higher wages, they have also been incarcerated at a disproportionate rate, especially since the declaration of a “war on drugs” in the 1980s. Scholars have described this racial mass incarceration as a “New Jim Crow.” The state of Alabama also currently faces a federal lawsuit, initiated by the Department of Justice, alleging unconstitutional conditions in Alabama’s prisons. These conditions continue to exist despite decades-long-running remedial litigation dating back to the 1970s, in which Judge Johnson issued a *Lee v. Macon*-style statewide injunction, and more recently filed litigation in which Judge Thompson concluded, in 2017, that mental healthcare in the state’s prison system was “horrendously inadequate” (*Braggs v. Dunn*, 257 F.Supp.3d 1171, 1297, MD, 2017).⁶⁵ The Justice Department’s current suit alleges that the Alabama Department of Corrections (“ADOC”) has failed to protect the incarcerated men from violence and sexual abuse at the hands of other

[nbcnews.com/news/nbcblk/birmingham-raises-minimum-wage-alabama-takes-it-away-n526806](https://www.nbcnews.com/news/nbcblk/birmingham-raises-minimum-wage-alabama-takes-it-away-n526806); Sydney Cromwell, Birmingham Watch, “Business Capital, Knowledge Remains Out Of Reach For Many Minority Entrepreneurs,” WBHM, <https://wbhm.org/2020/business-capital-knowledge-remains-out-of-reach-for-many-minority-entrepreneurs/>.

⁶⁵ Ivana Hyrnkiw, “Judge rules mentally ill Alabama prison inmates receive inadequate care,” June 27, 2017, *Al.com*, https://www.al.com/news/2017/06/federal_judges_rules_in_mental_html; Larry Yackle, *Reform and Regret: The Story of Federal Judicial Involvement in the Alabama Prison System* (New York: Oxford University Press, 1989); *James v. Wallace*, 382 F.Supp. 1177 (MD, 1974); *Pugh v. Locke*, 406 F.Supp. 318 (MD, 1976).

prisoners, from excessive force by correctional officers, and from the inevitable consequences of unsafe and unsanitary housing. In both the Justice Department report and in a recent *New York Times* piece featuring letters from multiple inmates, a picture emerges of a system in Alabama in which correctional officers are so outnumbered and conditions are so systemically violent that officers and staff often simply hide behind barricades and allow the prison population to police itself. Rape, stabbings, attacks on both officers and other inmates, drug use, and corruption all appear to be commonplace.⁶⁶

The representation of Black people among the incarcerated in Alabama is grossly disproportionate. As of a January 2020 report issued by the Alabama Department of Corrections (“ADOC”), Black inmates accounted for the majority of the inmate population, despite Black people only constituting 27 percent of the state’s population. Alabama’s prisons are also catastrophically overcrowded; the state was recently criticized for trying to address overcrowding by pledging funds intended for COVID-19 relief to the

⁶⁶ “Investigation of Alabama’s State Prisons for Men,” United States Department of Justice, Civil Rights Division, April 2, 2019, <https://www.justice.gov/opa/press-release/file/1150276/download>; New York Times Staff, “‘No One Feels Safe Here’: Life in Alabama’s Prisons,” *New York Times*, April 29, 2019, <https://www.nytimes.com/2019/04/29/us/alabama-prison-inmates.html>; Mike Cason, “New Department of Justice complaint says Alabama has not improved prison conditions since 2019 allegations,” *al.com*, Nov. 23, 2021, <https://www.al.com/news/2021/11/new-department-of-justice-complaint-says-alabama-has-not-improved-prison-conditions-since-2019-allegations.html>.

building of new prisons, thereby taking funds away from one crisis that disproportionately affects Black people to address another one.⁶⁷ Even when released, especially in Alabama, former Black inmates find it harder to exercise their right to vote. In the 1990s, the state reenacted its felon disenfranchisement law after the *Hunter v. Underwood* decision in 1985. The current law has disenfranchised 15 percent of the Black voting age population, and only 7 percent of the white voting age population.⁶⁸

Beyond the issues with Alabama's penal system, broadly, Black youth, many of whom attend segregated schools deemed by the state to be "failing," also face disparities in the state's juvenile justice system. A 2017 report of the Alabama Juvenile Justice Task Force, chaired by two white Republicans, found that "Racial disparities exist throughout the juvenile justice system." The Task Force determined that "A larger share of black youth are placed in detention, out-of-home diversion, and DYS [Department of Youth Services] custody than their share of the overall youth population," and that "Black youth also receive a

⁶⁷ "Alabama Department of Corrections, Monthly Statistical Report for January 2020 Fiscal Year 2020," Research and Planning division, State of Alabama, <http://www.doc.state.al.us/docs/MonthlyRpts/DMR%2001%20January%202020PUB.pdf>; Associated Press Wire, "Alabama to use Covid rescue funds to build prisons," NBC News, Oct. 2, 2021, <https://www.nbcnews.com/news/us-news/alabama-use-covid-rescue-funds-build-prisons-n1280624>.

⁶⁸ No author, "NAACP fights for prison registration," *Birmingham News*, Oct. 1, 2008; Desiree Hunter, "Pastor, state prisons settle suit on inmate voting," *Anniston Star*, Oct. 22, 2008.

disproportionately high share of dispositions to DYS custody when compared to their share of initial complaints,” a disparity that “holds true when comparing complaints and out-of-home placements for youth who commit misdemeanors or felonies.”⁶⁹

In terms of health, between Reconstruction and enactment of the Civil Rights Act of 1964, Black citizens had to fend for themselves, with help from charitable organizations like the Rosenwald Fund and the Catholic Church. Following the passage of the Civil Rights Act and the enactment of Great Society social welfare programs, Black Alabamians experienced racially discriminatory dispersion of federal aid in, for example, the program now known as Temporary Assistance to Needy Families, for which state dispersion of aid has been twice cited by federal courts for discrimination.⁷⁰

Today, Black communities in the Black Belt continue to struggle in primitive conditions and suffer unusual health difficulties and lack of even the most basic services. A 2019 United Nations (“U.N.”) mission to the United States aimed at examining conditions of “extreme poverty” found conditions in Alabama’s that were “very uncommon in the First World.” The U.N.’s Special Rapporteur on Extreme Poverty and Human

⁶⁹ “Final Report,” Alabama Juvenile Justice Task Force, December 2017, <http://lsa.state.al.us/PDF/Other/JJTF/JJTF-Final-Report.pdf>.

⁷⁰ Flynt, *Alabama in the Twentieth Century*, pp. 365-66; *Smith v. King*, 277 F.Supp. 31 (MD, 1968); *Whitfield v. Oliver*, 399 F. Supp. 348 (MD, 1975).

Rights, Philip Alston, reported that Black residents lacked proper sewage and drinking water systems and had unreliable electricity. Residents had constructed homemade water delivery systems using PVC pipe, did not have consistent access to drinking water that had not been tainted by raw sewage, and often fell ill, entire households at a time, with E. Coli and hookworm. After visiting a Black man's Butler County home, where sewage was bubbling up out of the ground due to a failed septic tank, Alston assessed the situation, saying, "There is a human right for people to live decently, and that means the government has an obligation to provide people with the essentials of life, which include power, water and sewage service." He added, "But if the government says, 'oh no, we're not going to do it,' and leaves you to install very expensive septic tanks, that's not how it should work." Under H.B. 1, the state's current congressional plan, Butler County lies in the 2nd Congressional District.⁷¹

Black residents of Uniontown, in Perry County, fought a decision by the state to allow 4 million tons of potentially toxic coal ash to be transferred from the site of a coal-fired electrical plant accident in Tennessee to a landfill in the town. The coal ash was spilled into a river in Kingston, Tennessee, where years later multiple residents have been diagnosed with various forms of cancer. Then-Congressman Artur Davis

⁷¹ Connor Sheets, "UN poverty official touring Alabama's Black Belt: 'I haven't seen this' in the First World," *al.com*, March 7, 2019, https://www.al.com/news/2017/12/un_poverty_official_touring_al.html.

protested the coal ash's transfer to Alabama, as did local residents, overwhelmingly Black, but met resistance from the state's Department of Environmental Management.⁷²

Black communities in the state's urban areas suffer from industrial pollution as well, as the court in *People First* acknowledged. The North Birmingham neighborhood in the city of Birmingham is home to much of what remains of the city's heavy industry, including coke plants. At the height of the "Magic City's" rise, it provided company housing for workers. Over time it became an exclusively Black working class neighborhood. At the apex of the civil rights movement in Birmingham, it was the home of activist minister Fred Shuttlesworth's Bethel Baptist church and a focal point for civil rights organization. In 2013 the EPA designated the 35th Avenue area in North Birmingham a "Superfund" site, meaning the EPA can use specially designated funds to remove and replace soil laden with toxic materials from airborne and

⁷² Marianne Engelman-Lado, et al., "Environmental Injustice in Uniontown, Alabama, Decades after the Civil Rights Act of 1964: It's Time For Action," American Bar Association, May 21, 2021, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/vol--44--no-2--housing/environmental-injustice-in-uniontown--alabama--decades-after-the/; Kristen Lombardi, "Welcome to Uniontown: Arrowhead Landfill Battle a Modern Civil Rights Struggle," NBC News, Aug. 5, 2015, <https://www.nbcnews.com/news/nbcblk/epa-environmental-injustice-uniontown-n402836>; No Author, "Artur Davis Asks EPA For Coal Ash Standards," Alabama Public Radio, Oct. 16, 2009, <https://www.apr.org/2009-10-16/artur-davis-asks-epa-for-coal-ash-standards>;

waterborne pollution emanating from nearby factories. The following year, the EPA moved to place the site on a priority list for cleanup. The state of Alabama, via its Department of Environmental Management Office of External Affairs and the Office of the Attorney General, has consistently opposed the move, which would require that the state help pay for the cleanup if the corporations the EPA has deemed responsible do not. Birmingham Mayor Randall Woodfin and Representative Terri Sewell support adding the site to the priority list. Sewell has insisted, “No family should have to live with a contaminated backyard, and no community should be left to clean up decades of industrial waste.”⁷³

b. Education

Alabama has a long history of discrimination in education. In 1967 Alabama became the first state ever

⁷³ Steven Mufson, “The betrayal: How a lawyer, a lobbyist and a legislator waged war on an Alabama Superfund cleanup,” *Washington Post*, Aug. 24, 2019, https://www.washingtonpost.com/national/health-science/the-betrayal-how-a-lawyer-a-lobbyist-and-a-legislator-waged-war-on-an-alabama-superfund-cleanup/2019/04/24/834087ae-4c1a-11e9-9663-00ac73f49662_story.html; Madison Underwood, “State fighting EPA drive to add North Birmingham pollution site to Superfund priority list,” *al.com*, Feb. 7, 2020, https://www.al.com/news/birmingham/2014/11/state_at_odds_with_epa_on_nort.html; Elizabeth Patton, “Terri Sewell, Randall Woodfin weigh-in on Birmingham indictments surrounding EPA clean-up site,” *Alabama Today*, Nov. 15, 2018, <https://altdaily.com/archives/27527-terri-sewell-randall-woodfin-weigh-in-on-birmingham-indictments-surrounding-epa-clean-up-site>.

subjected to a statewide structural injunction. That year, 13 years after *Brown v. Board*, a 3-judge federal trial court found that state officials had, “through their control and influence over” local school boards, “flouted every effort to make the Fourteenth Amendment a meaningful reality to Negro school children in Alabama” (*Lee v. Macon County Board of Education*, 267 F.Supp. 458, MD, affirmed 389 U.S. 215). The court enjoined state officials and, by proxy, 99 school systems across the state, along with the state’s junior colleges and trade schools, and eventually its teachers’ associations and athletic associations. The state’s actions before, during, and after the trial of that case on the merits demonstrate the vigor with which it resisted granting basic rights to Black citizens.

When *Brown* was decided in 1954, the NAACP in Alabama petitioned local school boards for a commitment to adhere to the ruling. White men who rejected the violent efforts of the Ku Klux Klan, especially the aforementioned state legislator Sam Engelhardt, responded by organizing Citizens’ Councils, which used economic reprisal to punish Black people who pressed for school desegregation. Black plaintiffs nonetheless began to file suit in the late 1950s, seeking redress in federal courts, but not until 1963 did trial courts in four cases order the desegregation of a handful of all-white schools. Klansmen then bombed a Black church in Birmingham in response, killing four children, and the governor and state legislature reinvigorated an

already decades-long running campaign to keep public schools in the state entirely white.⁷⁴

After the passage of the Civil Rights Act in 1964, the U.S. Department of Health, Education, and Welfare (“HEW”) pressed local school systems to desegregate. Governor George Wallace intimidated local school boards, threatening to remove state funding or to hold “mass meetings” in any county or town whose school board agreed to abide by HEW provisions or federal court orders. When the court added the United States as a party in *Lee v. Macon*, it brought the Justice Department into the case. Attorneys from the CRD and for the private litigants recognized that, not only had Wallace demonstrated that he had control over local school boards, but Alabama law gave the state Board of Education control over local boards, even in day-to-day affairs, a reality traceable to the state’s first “redeemer” constitution. Plaintiffs asked the court to compel the state to use that power to desegregate, rather than to prevent desegregation, and to issue a statewide desegregation order, which it did in March 1967.⁷⁵

⁷⁴ Bagley, *The Politics of White Rights*, pp. 14-76; *Armstrong v. Birmingham Board of Education*, 220 F. Supp. 217 (ND); *Davis v. Board of Commissioners of Mobile* 219 F.Supp. 542 (SD); *Hereford v. Huntsville Board of Education*, *Race Relations Law Reporter* 8.3 (Fall, 1963, ND), p. 908; *Lee v. Macon County Board of Education*, 267 F.Supp. 458 (MD); *U.S. v. Wallace*, Civ. A. No. 1976-N (MD, 1963).

⁷⁵ Bagley, *The Politics of White Rights*, pp. 87-88, 119-22; federal courts also issued desegregation orders and guidelines involving public schools in Alabama in, *inter alia*, *U.S. and Bennett v. Madison County Board of Education*, 219 F. Supp. 60 (ND,

Judge Johnson, writing for the court, insisted that the relief awarded in *Lee v. Macon* had to “reach the limits of the defendants’ activities.” As Professor Brian Landsberg has explained, “Because the racial segregation was systemic, the violation could be cured only by systemic relief.” What made the 1967 *Lee v. Macon* ruling extraordinary was that it provided that kind of remedial, sustained systemic relief on a statewide level.⁷⁶ Under the court’s order, state officials, especially the state superintendent of education, were to ensure that the 99 school systems not already under court order in another case begin to disestablish their racially dual school systems by adopting the court’s model

1963); *Brown v. Board of Education of Bessemer*, 419 F.2d 1211 (5th CCA, 1964); *Boykins and U.S. v. Fairfield Board of Education*, 457 F.2d 1091 (5th CCA, 1972); *U.S. and Miller v. Gadsden Board of Education*, 482 F.2d 1234 (5th CCA, 1973); *Huston v. Lawrence County Board of Education*, 320 F.Supp 790 (ND, 1970); *Harris v. Crenshaw County Board of Education*, 259 F. Supp. 167 (MD, 1966); *Franklin v. Barbour County Board of Education*, 259 F. Supp. 545 (MD, 1966); *Alabama State Teachers Association v. Lowndes County Board of Education*, 289 F. Supp. 300 (MD, 1968); *Adams v. Lucy*, 228 F.2d 619 (5th CCA, 1955), cert. denied 351 U.S. 931 (1956); *Franklin v. Parker*, 223 F. Supp. 724 (MD, 1963), modified 331 F.2d 841 (5th CCA, 1964); *Carr v. Montgomery County Board of Education*, 395 U.S. 225 (1969); *Alabama NAACP v. Wallace*, 269 F.Supp. 346 (MD, 1967); *U.S. v. Choctaw County Board of Education*, 259 F.Supp. 458 (SD, 1966); *U.S. v. Hale County Board of Education*, 445 F.2d 1330 (5th CCA, 1971); see also notes 69, *supra*, and 74-77, *infra*.

⁷⁶ Bagley, *The Politics of White Rights*, pp. 119-22; Brian K. Landsberg, “*Lee v. Macon County BOE: The Possibilities of Federal Enforcement of Equal Educational Opportunity*,” *Duke Journal of Constitutional Law and Public Policy* 12, No. 1: pp. 1-52, pp. 37-38.

desegregation plan that fall. Private plaintiffs and the CRD would monitor progress and submit motions for further relief, as necessary. Gradually, each local school system would become a defendant party in the suit. The court, with plaintiffs' counsel, determined when the systems had reached a point at which a consent decree could be entered and the individual system's case could be transferred to a single judge in their district. Plaintiffs and the court would continue to monitor progress until "unitary status," as articulated in *Green v. County School Board of New Kent County* (391 U.S. 430, 1968), had been achieved.

As a direct result of recalcitrance from officials at the state and local level, the "freedom of choice" plans adopted under the initial model plan had not, by the 1970s, resulted in actual integration, only token desegregation. And as Circuit Judge John Minor Wisdom explained, the goal of school desegregation litigation had always been to move beyond a scenario in which there were still "white schools or Negro schools" to one in which there were "just schools," or in other words, to have a "*bona fide* unitary system" (*U.S. v. Jefferson County Board of Education*, 372 F.2d 836, para. 172, 5th CCA, 1965). Courts began to grant relief when plaintiffs moved for the adoption of compulsory assignment plans. Compulsory assignment led to a renewed white revolt against desegregation – violent, litigious, political, and otherwise – and many whites fled for

exclusively or overwhelmingly white suburbs or private schools.⁷⁷

Desegregation litigation continues today, and in some areas, segregation has gotten worse. As of 2020 nearly 50 school systems remain under desegregation orders. The Huntsville schools case remains active before this Court, for example, as several more factors, including student discipline, have not been adequately addressed. In the 2019-2020 school year, for example, 52 percent of Black students at Huntsville High received a disciplinary referral, compared to just 12 percent of white students.⁷⁸

Segregation in the state's metropolitan areas is almost as profound, with white families having left cities like Birmingham and Montgomery for suburbs with majority white, independent school systems or for private schools. In the *Stout v. Jefferson County* case, this Court recently granted, in part, the motion of the City of Gardendale, to separate from the Jefferson County

⁷⁷ Bagley, *The Politics of White Rights*, pp. 146-79.

⁷⁸ Yue Qiu and Nikole Hannah-Jones, A National Survey of School Desegregation Orders, Dec. 23, 2014, *ProPublica*, <https://projects.propublica.org/graphics/desegregation-orders>; School Segregation Data, *ProPublica*, <https://www.propublica.org/datastore/dataset/school-segregation-charter-district-data>; Anna Claire Vollers, "Huntsville chips away at 57-year-old school desegregation order," Jan. 12, 2020, <https://www.al.com/news/huntsville/2020/01/huntsville-chips-away-at-57-year-old-school-desegregation-order.html>; *Hereford v. Huntsville Board of Education*, No. 5:63-CV-00109-MHH, 2015, WL 13398941 (ND); No Author, "Huntsville City Schools granted partial unitary status in desegregation case," *al.com*, Jan. 9, 2009, WAFF48, <https://www.waff.com/2020/01/10/huntsville-city-schools-granted-partial-unitary-status-desegregation-case/>.

system, even though the Court found that “race was a motivating factor” and that such motivation was “deplorable” (*Stout v. Jefferson County Board of Education*, No. 2:1965cv00396-1141, ND, April 24, 2017). In February of 2018, the order was reversed by the 11th Circuit, which affirmed the finding of discriminatory intent and blocked the City of Gardendale’s attempt to separate.⁷⁹

Recent litigation has addressed ongoing inequities and discrimination in schools across the state. The mother of a former student at Franklin County’s Phil Campbell High School filed suit in January after her son was subjected to numerous incidents of racist harassment by white students. White administrators not only failed to address the harassment, but punished the Black student on more than one occasion. The Leeds Board of Education, after being sued by the parents of Black children in an ongoing desegregation case, agreed to restart its school lunch program. The board had shut the program down, citing Governor Kay Ivey’s COVID stay-at-home order. Plaintiffs successfully argued that school lunch programs were exempt from the order and that suspending the program disproportionately affected Black children enrolled in the school system, some 80 percent of whom are economically disadvantaged.⁸⁰

⁷⁹ *Stout and U.S. v. Jefferson County Board of Education*, 11th CCA, Feb. 13 (2018), <http://media.ca11.uscourts.gov/opinions/pub/files/201712338.pdf>.

⁸⁰ *Stout v. City of Leeds Board of Education*, No. 2:17-MC-681-MHH, 2020 WL 1983331; Ivana Hrynkiw, “Parent says son

As recently as November 2021, white students in Alabama schools have made patently racist remarks and posted them online. White students at Cullman High School circulated a video, which was received by Black students, of a white student chanting “white power” and “kill all the n----rs.” The student was the child of a member of the local board of education. A year prior to that, white students at Mountain Brook High School circulated a video showing students laughing and doing the Nazi salute as another student paraded around with swastikas on his back. The school board formed a diversity committee, which recommended anti-bias training, which the school system never implemented. A year before that incident, students at Hoover High School were filmed having the following exchange: Student 1, “F--- n-----’s, f--- Jews;” Student 2, “Jews are fine because they’re white. We just need the n----’s gone.”⁸¹

was harassed, sues Franklin County school for racial discrimination,” Jan. 17, 2020, *al.com*, https://www.al.com/news/huntsville/2020/01/parent-says-son-was-harassed-sues-franklin-county-school-for-racial-discrimination_html; Trisha Powell Crain, “Alabama school district restarts student meals after legal action filed,” *al.com*, April 17, 2020, <https://www.al.com/news/2020/04/stopping-school-meals-violates-federal-desegregation-order-group-says.html>.

⁸¹ Trisha Powell Crane, “Alabama high school students filmed using racist slurs,” March 4, 2019,” *al.com*, <https://www.al.com/news/2019/03/alabama-high-school-students-filmed-using-racist-slurs.html>; Crane, “Jewish Federation concerned about video of Mountain Brook children drawing swastika,” May 13, 2020, *al.com*, https://www.al.com/news/2020/05/jewish-federation-concerned-about-video-of-mountain-brook-children-drawing-swastika_html; Rebecca Griesbach, “‘I can’t say anything’: Alabama students, parents wrestle with impact of racist video,” *al.com*,

The Alabama Accountability Act, enacted in 2013, labels the bottom 6 percent of the state's schools, by proficiency in reading and math, as "failing," borrowing from the No Child Left Behind extension of the Elementary and Secondary Education Act. For 2020-2021, as in previous years, all 75 schools on the list of failing schools were majority Black, most overwhelmingly so. Most of the schools are in majority-Black school systems in or around Birmingham, Montgomery, and Mobile, or in the Black Belt.⁸²

Courts have also found that Alabama's institutions of higher learning have been plagued by "vestiges of segregation," decades after the initiation of court-ordered desegregation (*Knight v. Alabama*, 787 F.Supp. 1030, 1352, ND, 1991). The University of Alabama and Auburn University were desegregated in the 1960, but in 1991, a trial court in *Knight v. Alabama* found that the state was still obligated to eliminate the lingering effects of segregation and discrimination in those institutions, and their proposed satellites, and to make an effort to recruit Black students to those schools and to recruit white students to the state's Historically Black Colleges and Universities (HBCUs). After a partial reversal, the court in 1995 issued a remedial decree similar to that issued in *Lee v. Macon*, with the court overseeing implementation over the next

<https://www.al.com/news/2021/11/i-cant-say-anything-alabama-students-parents-wrestle-with-impact-of-racist-video.html>.

⁸² Trisha Powell Crane, "Here's the new list of 'failing' schools in Alabama," *Al.com*, Nov. 1, 2019, <https://www.al.com/news/2019/11/heres-the-new-list-of-failing-schools-in-alabama.html>.

decade.⁸³ Prior to that window closing, the *Knight* plaintiffs argued that the state had been “shielding the property of whites from being taxed to support the education of blacks,” thereby “denying black citizens equal access to attend and to complete higher education.” They cited two amendments to the state’s 1901 constitution known as the “Lid Bills.”⁸⁴

c. The Lid Bills

The original Lid Bill was conceived by state senator Walter Givhan, a Citizens’ Council pioneer and arguably the most prolific segregationist lawmaker in Alabama history, in 1972. Four converging factors motivated Sen. Givhan: government-enabled white flight turning Black Belt public school systems all-Black; Black candidates beginning to get elected in those same districts thanks to enforcement of the VRA; the state legislature being forced to adopt an equitable reapportionment; and a federal trial court ruling in *Weissinger v. Boswell* insisting that the state overhaul its tax assessment system.⁸⁵ Givhan proposed constitutionalizing a scheme in which residential, farm, and timber land would be assessed at a lower percentage (15 percent) than commercial property (25 percent) or utilities property (30 percent). To this was added a 1.5

⁸³ Bagley, *The Politics of White Rights*, pp. 5-6, 223-24.

⁸⁴ Bagley, *The Politics of White Rights*, pp. 5-6, 223-24; *Knight v. Alabama*, affirmed in part, 14 F.3d 1534 (11th CCA, 1994), 900 F.Supp 272 (ND, 1995) (*Knight II*).

⁸⁵ Bagley, *The Politics of White Rights*, pp. 210-15; *Weissinger v. Boswell*, 330 F.Supp 615 (MD, AL 1971).

percent “lid” or cap on the total *ad valorem* tax revenue that could be collected from any piece of property. Underlying this effort was the fact that almost all of the land in the Alabama Black Belt was owned by white people or corporations controlled by them. The bill passed and was ratified by voters.⁸⁶

By the end of the decade, white lawmakers and property owners had begun to worry that Black elected officials might exercise a “local option” in the original Lid Bill that allowed county or municipal governments to raise millage rates, provided such measures passed through the state legislature. With Black political representation increasing not just in the Black Belt but also in cities like Birmingham and Mobile, the fear was that an alliance of urban representatives, Black and white, and rural Black officials might allow the latter to raise tax millage rates. The *Mobile Press-Register* explained that white lawmakers were “fearful that the black political leaders, who also enjoy voting majorities, will exercise local options and set property taxes at the highest rates possible in order to raise additional funds for their governmental operations,” with such taxes being paid by “white owners of large farms and corporate interests with large timberland holdings.” As state Republican Party Chairman John Grenier would later acknowledge, “The problem with the property tax, like everything, goes back to race in Alabama. I think probably whites feel like they own the property, and the property tax goes up, and

⁸⁶ Bagley, *The Politics of White Rights*, pp. 210-15.

proceeds will go to blacks.”⁸⁷ George Wallace lent his support to a new bill that removed the local option, lowered the assessment rate for farm and timber land, and lowered the overall lid to one percent. It also allowed for “current use” assessment of land, as opposed to fair market value, which considered potential development, among other factors. State voters ratified the new amendment in 1978.⁸⁸

The plaintiffs in *Knight* called historians to testify, who linked the Lid Bills to the redeemer constitutions of 1875 and 1901 and to a historical rejection of white tax dollars for Black education. The experts argued that the lingering effects of the amendments prevented Black students from enjoying equal access to higher education in the state. The court in 2004 agreed that the Lid Bills were a part of Alabama’s long and abysmal history of race discrimination but denied the plaintiffs’ claim on the ground that the action was an improper venue for a claim seeking their invalidation or injunction. A new case, targeting only the Lid Bills, was filed in 2008.⁸⁹

In a 2011 decision in *Lynch v. Alabama*, the court insisted that it was limited by the Supreme Court’s decision in *San Antonio v. Rodriguez* – in which the Court denied that there is a fundamental constitutional right

⁸⁷ Grenier quoted in Allen Tullos, *Alabama Getaway: The Political Imaginary and the Heart of Dixie* (Athens: University of Georgia Press, 2011), p. 188; *Mobile Press-Register* quoted in Bagley, *The Politics of White Rights*, pp. 210-15.

⁸⁸ Bagley, *The Politics of White Rights*, pp. 210-15.

⁸⁹ Bagley, *The Politics of White Rights*, pp. 224-26.

to equal educational opportunity – and that the defendants were arguably motivated by a history of antipathy to taxation that was independent of race discrimination. However, the court acknowledged, in a very lengthy opinion, the discriminatory effects of Alabama’s property taxation scheme and cited the plaintiffs’ expert witness historians, who fleshed out the testimony in *Knight*, linking the Lid Bills to the state’s white supremacist constitutions. The court agreed that the property tax scheme enshrined by the amendments was “crippling” Black education in the state.⁹⁰

At the time *Lynch* was decided, Alabama had not only the lowest property tax revenues in the United States, but they were also twice as low as the state coming in at number 49 and three times lower than the national average. A mere five percent of the state’s tax revenue came from property taxes. Most of it came from regressive sales and incomes taxes that disproportionately affect poor people, of which Black people are disproportionately represented in Alabama. The 11th Circuit appellate court acknowledged this and insisted that it was “cognizant of Alabama’s deep and troubled history of racial discrimination,” which had been “illustrated vividly by the plaintiffs at trial.” But it could find no legal fault in the trial court’s ruling, since the plaintiffs were held to the standard of proving discriminatory intent. The Senate Factors,

⁹⁰ *Lynch v. Alabama*, 2011 U.S. Dist. LEXIS 155012 (ND, AL, 2011), 798-800, *Lexis-Nexis Academic*.

however, allow plaintiffs to consider the effects of past discrimination, which seem here to be relevant.⁹¹

IV. FACTOR 6: POLITICAL CAMPAIGNS CHARACTERIZED BY RACIAL APPEALS

White lawmakers in Alabama learned long ago to colormask their public statements, just as they have learned to colormask the legislation intended to protect their racial prerogatives. Not since the high-tide of brazen white supremacy, when George Wallace proclaimed, “segregation forever,” have public figures been so bold. Skilled politicians have since mastered the art of deploying coded racial appeals, and historians have been able to home in on certain messages that lawmakers know will resonate with white voters. Yet even today, in campaign ads and in other public speech, including on social media, white Alabama politicians reveal that direct invocations of race still appeal to white voters. This is not to say that this or that white elected official is “racist,” but to acknowledge that racial appeals are present in campaigns.⁹²

⁹¹ Lynch v. Alabama, No. 11-15464 (11th CCA, 2014), published at *Justia*, pp. 2, 28, <https://law.justia.com/cases/federal/appellate-courts/ca11/11-15464/11-15464-2014-01-10.html>

⁹² Bagley, *The Politics of White Rights*, pp.7-11. See also Wayne Flynt, *Alabama in the Twentieth Century*, pp. 104-5; Dan Carter, *From George Wallace to Newt Gingrich: Race in the Conservative Counterrevolution, 1963-1994* (Baton Rouge: Louisiana State University Press, 1999), and Joseph Crespino, *In Search of Another Country: Mississippi and the Conservative Counterrevolution* (Princeton University Press, 2009), passim.

Former United States Senate candidate Roy Moore, who was twice removed from the state Supreme Court for failure to obey federal court orders, won the Republican Party nomination in 2017 for the seat vacated by candidate Jeff Sessions when he became Attorney General. During the campaign, Moore insisted that the United States would be better off without any of the Amendments to the Constitution that follow the 10th. Moore argued, “That would eliminate many problems. You know, people don’t understand how some of these amendments have completely tried to wreck the form of government that our forefathers intended.” This would of course include the 13th Amendment, which ended slavery, and the 15th Amendment, which established voting rights for Freedmen. Moore singled out the 14th Amendment, which was enacted to protect the rights of former enslaved people, insisting that it “allow[s] the federal government to do something which the first 10 amendments prevented them from doing.” Moore has also described the antebellum period in the South as follows: “I think it was great at the time when families were united – even though we had slavery. They cared for one another. People were strong in the families. Our families were strong. Our country had a direction.”⁹³

⁹³ Philip Bump, “Roy Moore: America was great in era of slavery, is now ‘focus of evil in the world,’” *Washington Post*, Dec. 8, 2017, <https://www.washingtonpost.com/news/politics/wp/2017/12/08/roy-moore-america-was-great-in-era-of-slavery-is-now-focus-of-evil-in-the-world/>; German Lopez, “Roy Moore was once again caught making that can be interpreted as okay with slavery: maybe he believes what he keeps saying,” *Vox*, Dec. 11, 2017,

Another Alabama jurist, state Supreme Court Chief Justice Tom Parker, in 2018 ran a campaign ad that a federal trial court found to be based upon a racial appeal. Justice Parker targeted the Southern Poverty Law Center, an advocacy group for minorities, and made clear that he opposed “the leftist mob tr[ying] to destroy our society” showing at that moment images of U.S. Congresswoman Maxine Waters, a Black member of Congress from California. The trial court concluded that, “when juxtaposed with images of an African-American Democratic congresswoman from California who had no other reason to appear in an ad for an Alabama judicial race . . . one of the motives of the ad was to draw attention to race” (*Alabama State Conf. of the NAACP v. Alabama*, CASE NO. 2:16-CV-731-WKW, @ p. 153).

Mo Brooks, Republican U.S. Congressman for Alabama’s 5th District, has repeatedly claimed that Democrats are waging a “war on whites” by “claiming that whites hate everybody else.” In 2016, Brooks explained, “They are trying to motivate the African American vote to vote-bloc for Democrats by using every Republican as a racist tool that they can envision.” Brooks has also characterized people who receive assistance through the Supplemental Nutrition Assistance, or SNAP, program as undeserving. In

<https://www.vox.com/policy-and-politics/2017/12/7/16748038/roy-moore-slavery-america-great>; Scott Douglas, “The Alabama Senate Race May Have Already Been Decided,” *New York Times*, Dec. 11, 2017, <https://www.nytimes.com/2017/12/11/opinion/roy-moore-alabama-senate-voter-suppression.html>.

applauding cuts to the program, the beneficiaries of which in Alabama would include tens of thousands of Black people, Brooks said, “It is wrong to let slackers take roughly \$70 billion per year from hard-working taxpayers who need that money for their own needs.” Such colormasked appeals are a product of half a century of connecting federal welfare and public health programs with racial animosity and deploying coded attacks on the former with appeals to the latter.⁹⁴

Representative Bradley Byrne of the state’s 1st Congressional District, when he was vying for a Senate seat, aired a campaign ad in which he condemned

⁹⁴ Massie, “Rep. Brooks: Dems’ ‘war on whites’ behind some criticism of Sessions”; Leada Gore, “Rep. Mo Brooks: People who live ‘good lives’ should pay less for health insurance,” May 2, 2017, *al.com*, https://www.al.com/news/2017/05/rep_mo_brooks_people_who_live.html; Jonece Starr Dunigan, “Mo Brooks: ‘War on whites’ led to criticism of Jeff Sessions,” *al.com*, Jan. 12, 2020, https://www.al.com/news/2017/01/mo_brooks_criticism_of_jeff_se.html; Sam Levine, “GOP Congressman Accuses Democrats Of Waging A ‘War On Whites,’” *Huffington Post*, Aug. 4, 2014, https://www.huffpost.com/entry/mo-brooks-war-on-whites_n_5647967; Paul Gattis, “No more ‘war on whites’: Rep. Mo Brooks says RNC chair wants ‘better descriptive phrase,’” *al.com*, Aug. 8, 2014, https://www.al.com/news/2014/08/no_more_war_on_whites_rep_mo_b.html; Paul Gattis, “Rep. Mo Brooks: Democrats ‘dividing America by race’ in ‘waging a war on whites,’” *al.com*, Aug. 4, 2014, https://www.al.com/news/2014/08/rep_mo_brooks_democrats_dividi.html; Chris Massie, “Rep. Brooks: Dems’ ‘war on whites’ behind some criticism of Sessions,” *CNN.com*, Jan. 12, 2016, <https://www.cnn.com/2017/01/11/politics/kfile-mo-brooks-war-on-whites/index.htmlsr=twCNN011117kfile-mo-brooks-war-on-whites-1042PMVODtopPhoto&linkId=33295365>; Anna Claire Vollers, “Mo Brooks outspoken in Senate run, ‘I believe we need another Jeff Sessions,’” *al.com*, June 6, 2017, https://www.al.com/news/2017/06/mo_brooks_senate_alabama_jeff.html.

Black people by placing their images in a fire. The television spot begins with Byrne staring into a wood fire in a backyard and lamenting the loss of his brother in the armed services. He shifts to lamenting the course the country is taking, as the faces of Black and Brown people appear in the fire. Former National Football League quarterback Colin Kaepernick appears in the fire, as Byrne calls him an “entitled athlete dishonoring” the American flag. Members of the Congressional caucus known as “The Squad,” including Ilhan Omar and Alexandria Ocasio Cortez, appear in the fire and are accused of “attacking America” and “cheapening 9/11.” No white people appear in the fire.⁹⁵

U.S. Representative Barry Moore has repeatedly downplayed the January 6, 2021, U.S. Capitol insurrection and has Tweeted about the shooting of Capitol-infiltrator Ashli Babbitt by U.S. Capitol Police, “I understand it was a black police officer that shot the white female veteran. You know that doesn’t fit the narrative.” Congressman Moore has also Tweeted out a meme that suggested people injured by a car driven into an unarmed crowd of protestors in Charlottesville in 2017 “didn’t fight back.”⁹⁶

⁹⁵ Maria Pitofsky, “GOP rep releases campaign ad ripping Kaepernick, ‘The Squad,’” *The Hill*, Jan. 7, 2020, <https://thehill.com/blogs/blog-briefing-room/news/477092-gop-rep-releases-campaign-ad-ripping-kaepernick-the-squad>.

⁹⁶ Lawrence Specker, “Rep. Barry Moore Deletes Twitter account after suspension, controversial Capitol riot tweets,” Jan. 11, 2021, *al.com*, <https://www.al.com/news/mobile/2021/01/rep-barry-moore-deletes-personal-twitter-account-after-suspension.html>; Meghan Roos, “Alabama GOP Congressional Candidate

Finally, Representative Chris Pringle, co-chair of the Reapportionment Committee, previously gave up his seat in the state House to run for U.S. Congress in the 1st District. In a campaign ad, Pringle proudly labels himself “politically incorrect” and insists, “These days if you look like me and believe like me, everything that’s wrong in our society is your fault.” He explains, “If you’re straight, southern, conservative, and heaven forbid, Christian, they call you a racist and blame you for everyone else’s problems.”⁹⁷

V. FACTOR VII: THE EXTENT TO WHICH MINORITIES HAVE BEEN ELECTED TO OFFICE

Since Reconstruction, three Black candidates have won election to the U.S. House of Representatives from majority-Black districts, with never more than one serving at any given time. Despite constituting almost 27 percent of the state’s voting-age population, Black voters only form an effective voting majority, or anything approaching that, in one out of the state’s seven congressional districts (14 percent).⁹⁸

Faces Backlash after Posting and Deleting Meme on Kenosha Shooting Suspect,” *Newsweek*, Aug. 30, 2020, [https://www_newsweek.com/alabama-gop-congressional-candidate-faces-backlash-after-posting-deleting-meme-kenosha-shooting-1528614](https://www.newsweek.com/alabama-gop-congressional-candidate-faces-backlash-after-posting-deleting-meme-kenosha-shooting-1528614).

⁹⁷ Brent Wilson, “Chris Pringle: White Straight Southern Christian Conservatives Under Attack,” *Bama Politics*, Feb. 18, 2020, <https://www.bamapolitics.com/47024/chris-pringle-white-straight-southern-christian-conservatives-under-attack/>.

⁹⁸ 2020 U.S. Census Quick Facts, Alabama, <https://www.census.gov/quickfacts/AL>.

Black citizens hold no statewide offices in Alabama. Only three Black individuals have ever held any statewide office, despite Black candidates having run for Governor, Lieutenant Governor, U.S. Senate, Secretary of State, and state Auditor. Civil rights attorney Oscar Adams was appointed to a justiceship on the state Supreme Court in 1980 and won reelection in 1982 and 1988. Adams was replaced by Ralph Cook upon his retirement in 1993, and Justice Cook was able to win reelection in 1994. Justice John England was appointed to the court in 1999, but both he and Cook lost their reelection bids in 2000. Cook and Adams are the only African American candidates to ever run for and win statewide office. There are currently no Black judges on the state's Supreme Court or the Courts of Appeals.⁹⁹

Only through enforcement of the VRA, through CRD administrative action, and through litigation, including *Gingles* and *Dillard*, were Black voters able to register to vote and to elect candidates of their choice to the Alabama state legislature. The vast majority of Black representatives in the legislature today represent majority-Black districts that were created with judicial oversight, federal administrative oversight, or under the specter of litigation.

⁹⁹ Blacksher, et.al., "Voting Rights in Alabama, 1982-2006," pp. 277-78.

VI. FACTOR IIX: LACK OF RESPONSIVENESS

The state’s lack of responsiveness to the needs of Black Alabamians is exemplified by Black lawmakers failed efforts to advocate for a second majority-minority Congressional district, something that has been repeatedly rejected by white lawmakers. State representative Prince Chestnut, named-plaintiff in a redistricting lawsuit that pending when the 2020 Census was published, argued that a second Congressional majority-minority district would not only more accurately reflect, in the ability of Black voters to elect candidates of their choice to Congress, the percentage of the Black voting age population, it would also, “have the effect of more people in Alabama having representation that is congruent with their beliefs and ideals.”¹⁰⁰

Representative Merika Coleman, Senate Minority Leader Bobby Singleton, and Senator Rodger Smitherman introduced Congressional redistricting plans in 2021 that provided for a either a second majority-minority district or a Black “opportunity” district, but these were brushed aside by the Senator McClendon and Representative Pringle, the co-chairs of the Redistricting Committee. Senator McClendon has said of the possibility of drawing a second majority-minority district, “There is probably a way to maneuver around [and create two majority-minority districts], but it

¹⁰⁰ *Selma Times-Journal*, Nov. 16, 2019; *Montgomery Advertiser*, May 2, Nov. 3, 2021.

would be gerrymandering at its best [and] doesn't make sense at all."¹⁰¹

Lack of responsiveness is also evident in the state's response to the COVID-19 crisis. Black citizens have experienced higher rates of infection and death, and they have suffered from inequitable distribution of vaccines. White neighborhoods and suburbs in Birmingham and Mobile, for example, received vaccine doses months before, and in higher proportions, than poorer Black communities in those cities did.¹⁰² As of June 23, 2020, there had been 30.4 deaths per 100,000 people in the state among Black people and 12.5 deaths per 100,000 among white people. State Health Officer Scott Harris explained that this was not a biological phenomenon independent of sociohistorical factors. Harris said, "This is a disease that has worse outcomes in people that already have other social determinants like chronic health problems or issues just related to education and income." As of March 2021,

¹⁰¹ *Montgomery Advertiser*, Nov. 3, 5, 2021.

¹⁰² Margaret Newkirk, "A Black Neighborhood in Alabama Has Yet to Get a Single Vaccine, In a nearby wealthy White suburb, the doses flow," Bloomberg, Feb. 25, 2021, <https://www.bloomberg.com/news/features/2021-02-25/a-black-neighborhood-in-alabama-has-yet-to-get-a-single-vaccine>; Seam McMinn et al, "Across The South, COVID-19 Vaccine Sites Missing From Black And Hispanic Neighborhoods," NPR *Morning Addition*, Feb. 5, 2021, <https://www.npr.org/2021/02/05/962946721/across-the-south-covid-19-vaccine-sites-missing-from-black-and-hispanic-neighbor>; Abby Goodnough and Jan Hoffman, "The Wealthy Are Getting More Vaccinations, Even in Poorer Neighborhoods," *The New York Times*, Feb. 2, 2021, <https://www.nytimes.com/2021/02/02/health/white-people-covid-vaccines-minorities.html>;

data by race still bore out that Black people were contracting the disease and dying from it at higher rates than white people.¹⁰³

Much of what I discuss above under Factor 5 applies here as well. Black citizens who live in impoverished areas with lack of basic services and suffer the accompanying health issues, whose children attend “failing” schools and who lack transportation, or who otherwise do not have the means to attend some other school; whose children are disciplined more frequently in school or are subject to unequal treatment in the criminal justice system; whose school systems are crippled by underfunding thanks to the state’s property tax scheme; who suffer discrimination in the workplace; who supported Birmingham’s effort to raise the minimum wage only to see the state legislature block that effort: these are all people whose needs are not being met with a positive legislative response, either in the state legislature or in Congress. Alabama also recently enacted a Photo ID law that Black plaintiffs challenged in court as discriminatory, and it has closed numerous drivers’ license offices in predominantly

¹⁰³ Alabama Race and Ethnicity Data, Covid Tracking Project, Atlantic Monthly Group, <https://covidtracking.com/data/state/alabama/race-ethnicity>; APM Research Lab, “The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in U.S.,” June 24, 2020, <https://www.apmresearchlab.org/covid/deaths-by-race>; Ramsey Archibald, “Death rate due to coronavirus highest for black Alabamians,” *al.com*, April 8, 2020, <https://www.al.com/news/2020/04/death-rate-due-to-coronavirus-highest-for-black-alabamians.html>; Brownlee, “Governor: It would be “irresponsible” for Alabama to expand Medicaid right now.”

Black areas, drawing censure from the U.S. Department of Transportation.¹⁰⁴

The state of Alabama's failure to respond to the needs of its Black citizens is also exemplified by its refusal to expand Medicaid under the Affordable Care Act (ACA). When a task force convened by then-governor Robert Bentley recommended in 2015 that the state reverse the course it had taken since the ACA was enacted in 2011 and opt-in to the expansion, state Senator Quinten Ross, an African American and a Democrat, applauded the recommendation and insisted that this was what the state's Democratic Caucus had "been saying all along." More recently, amid the COVID-19 pandemic, other Black leaders in the state legislature have insisted, "It is high time that we expand Medicaid to provide vital coverage to the more than 340,000 uninsured Alabamians," adding, "There's a reason this virus is killing African Americans and those in poorer communities at a much higher rate. . . . outcomes are undoubtedly worse for those without coverage."¹⁰⁵

¹⁰⁴ Melanie Zanona, "Feds: Closing driver's license offices in Ala. violates civil rights," *The Hill*, Dec. 28, 2016, <https://thehill.com/policy/transportation/312055-feds-closing-driver-license-offices-in-alabama-violates-civil-rights>.

¹⁰⁵ Mike Cason, "Gov. Robert Bentley's task force recommends Medicaid expansion," *al.com*, Nov. 18, 2015, https://www.al.com/news/2015/11/gov_robert_bentleys_task_force.html; Anthony Daniels and Bobby Singleton, "Coronavirus crisis begs for Alabama Medicaid expansion," *Alabama Political Reporter*, April 17, 2020, <https://www.alreporter.com/2020/04/17/opinion-coronavirus-crisis-begs-for-alabama-medicaid-expansion/>.

Proponents argue that a Medicaid expansion under the ACA would close the “coverage gap” that exists between current Medicaid and ACA marketplace parameters. Around 134,000 Alabamians were in that gap as of 2018, about 40 percent of them minorities (the vast majority of whom were/are Black). Black citizens in Alabama are disproportionately harmed by the existence of the gap and the state’s refusal to close it, despite insistence from the governor’s own task force that doing so would actually have long-term fiscal and economic benefits for the state. According to a June 2020 report released by the Urban Institute in conjunction with the Robert Wood Johnson Foundation, Alabama would see the largest decrease in its uninsured rate, 43 percent, in the nation if it were to adopt expansion. According to a 2020 Kaiser Family Foundation report, some 224,000 Alabamians would become Medicaid eligible under expansion, 34 percent of them Black.¹⁰⁶

¹⁰⁶ Cason, “Gov. Robert Bentley’s task force recommends Medicaid expansion”; Rachel Garfield et al., “The Coverage Gap: Uninsured Poor Adults in States that Do Not Expand Medicaid,” Kaiser Family Foundation (KFF), Jan. 14, 2020, [https://www_kff.org/report-section/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid-data-and-methods/](https://www.kff.org/report-section/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid-data-and-methods/); KFF, “Who Could Get Covered Under Medicaid Expansion? State Fact Sheets,” Jan 23, 2020, <http://files.kff.org/attachment/fact-sheet-medicaid-expansion-AL>; Michael Simpson, “The Implications of Medicaid Expansion in the Remaining States: 2020 Update,” Urban Institute/ Robert Wood Johnson Foundation, June 2020, https://www.rwjf.org/en/library/research/2020/06/the-implications-of-medicaid-expansion-in-the-remaining-states--2020-update.html?cid=xem_other_unpd_ini:quickstrike_dte:20200608_des_medicaid%20exp.

Representative Sewell earlier this year cosponsored a bill that would allow the Centers for Medicare and Medicaid Services to bypass state governments and work directly with local government entities and expand Medicaid coverage. Sewell has said of the bill, “Because of the State of Alabama’s refusal to expand Medicaid, more than 200,000 low-income Alabamians who would otherwise qualify for health insurance coverage are being forced to go without care, putting their health and their lives at risk. If the State of Alabama won’t expand access to health care for our underserved communities, local governments should have the power to do it themselves.”¹⁰⁷

Representative Sewell is the only member of Alabama’s Congressional delegation who voted Yes to the infrastructure bill that recently passed Congress with bipartisan support. All other representatives voted No, including one who subsequently touted a project that can now move forward with the funding that the state will be awarded under the bill.¹⁰⁸

¹⁰⁷ Press Release from Office of Congresswoman Sewell, July 17, 2021, “Rep. Sewell Introduces COVER Now Act to Empower Local Governments to Overcome Obstruction to Medicaid Expansion,” <https://sewell.house.gov/media-center/press-releases/rep-sewell-introduces-cover-now-act-empower-local-governments-overcome>.

¹⁰⁸ Naomi Jagoda, “Alabama Republican touts provision in infrastructure bill he voted against,” *The Hill*, Nov. 17, 2021, <https://thehill.com/policy/finance/581934-alabama-republican-touts-provision-in-infrastructure-bill-he-voted-against>; Lazaro Gamio and Alicia Parlapiano, “How Every House Member Voted on the Infrastructure Bill,” *New York Times*, Nov. 5, 2021, <https://www.nytimes.com/interactive/2021/11/05/us/politics/house-vote-infrastructure.html>.

VII: CONCLUSION

Given Alabama's history of discrimination against Black citizens, the ongoing effects of that discrimination, the inability of Black voters to elect candidates of their choice to statewide office, the relative lack of representation of Black citizens in the state's Congressional delegations, and lawmaker's consistent lack of responsiveness to the needs of Black voters, the totality of the circumstances demonstrate that Black Alabamians lack an equal opportunity to right to participate in the political process and elect candidates of their choice.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge:

Respectfully Submitted and Executed, this day, 12-10-21.

/s/ Joseph Bagley
JOSEPH BAGLEY, PhD

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

EVAN MILLIGAN, et al.,)	CIVIL CASE NO.
Plaintiffs,)	2:21-CV-01530-AMM
VS.)	VIDEO
JOHN MERRILL, et al.,)	DEPOSITION OF:
Defendants.)	RANDY HINAMAN

STIPULATIONS

IT IS STIPULATED AND AGREED, by and between the parties through their respective counsel, that the deposition of:

RANDY HINAMAN,

may be taken before LeAnn Maroney, Notary Public, State at Large, at the law offices of Balch & Bingham, 105 Tallapoosa Street, Montgomery, Alabama, 36104, on December 9, 2021, commencing at 9:13 a.m.

* * *

[11] RANDY HINAMAN,

having been duly sworn, was examined and testified as follows:

* * *

[93] map. Do you recognize this?

A. I do.

JA270

Q. Does this appear to be a true and correct of the 2021 congressional map?

A. It does.

Q. We were talking about Montgomery County here not wanting to be split.

A. Three ways, yes.

(Plaintiff's Exhibit 6 was marked for identification.)

Q. I'm also going to hand you what's being marked as Plaintiff's Exhibit 6 for your reference. This is a copy of the 2011 congressional map.

So looking at Montgomery County, it looks like in – well, first off, Plaintiff's Exhibit 6, does that appear to be a true and correct copy of the 2011 congressional map, to your knowledge?

A. It does.

Q. We were – and you used this 2011 congressional map as the starting point in drafting the 2021 congressional map, correct?

A. I used the cores of the existing [94] districts as a starting point, yes.

Q. Is that different from using this map as the starting point?

A. I don't know. I don't think so.

Q. When you began drawing the 2021 congressional map, you didn't start from scratch, right?

JA271

A. No. Correct.

Q. You started using the 2011 congressional map?

A. Correct.

Q. Looking at Montgomery County, so that was split into three districts in 2011; is that right?

A. That's correct.

Q. Do you know why that was split into three districts at the time?

A. Not specifically, other than, obviously, it had been – Congressman Mike Rogers in the 3rd District had had an office in Montgomery, that part of Montgomery County, and had represented it for a while and probably didn't – didn't want to lose that base of support and financial support and so forth.

Q. In the 2011 congressional map, District [95] 7 reaches into a portion in the middle of Montgomery County. Do you know why it does that?

A. To gain population for that district.

Q. Was District 7 reaching into a portion of Montgomery County in the prior 2001 congressional map?

A. I don't know.

Q. Do you remember if Montgomery County – do you remember if District 7 reached into a portion of

Montgomery County in the 1992 congressional map that you drew?

A. I do not remember, no. I'm sure somebody has a map and could tell me. But I don't know.

Q. So it looks like from the 2011 congressional map to the 2021 congressional map, you were able to take District 3 out of Montgomery so that it's not split three ways anymore and is only split two ways; is that correct?

A. That's correct.

Q. Is there a reason why it still needed to be split into two different districts?

A. Yeah. I mean, obviously, the 7th District was underpopulated. So if you took it all the way out of Montgomery, then you would have to [96] add a number of different counties to make up that population.

Q. Well, it looks like District 7 also includes only a portion of Tuscaloosa County and Jefferson County, correct?

A. That's correct.

Q. So could you not have taken more of either Tuscaloosa County or Jefferson County and then been able to leave Montgomery County as being solely in one district?

A. Well, yeah, it would have been possible certainly in Jefferson. I don't know about Tuscaloosa. I don't think actually – I think there are many more

people in the 7th District portion of Montgomery than there are in the 4th District portion of Tuscaloosa. But yes, certainly in Jefferson that would have been possible.

But as you know, they – these all have to fit back together at the end. So what might have been a perfect map for somebody in Montgomery may not have created a perfect situation for whatever member represented Jefferson or wherever.

Q. Did you consider moving – did you consider making Montgomery County solely District 2?

A. I did not.

[97] Q. Why not?

A. Because, again, I didn't think it – while that may look like geographically not a very large area, it has a considerable number of voters in it. And it would have been hard to take that out of 7 and make up the population somewhere else.

About the only place, as you pointed out, to do that might have been Jefferson. But, again, we have two representatives in Jefferson County right now. And it would have been hard to eliminate one from that process.

Q. Is there anything in particular about this specific portion of Montgomery County that's in District 7 that makes it a community of interest or something that ties it into District 7 versus District 2?

A. Not necessarily. I mean, obviously, geographically it's next to – it's adjacent to Lowndes County.

Q. Did you look at racial data in including that portion of Montgomery County in District 7?

A. I didn't. When we started doing – I didn't initially. When we started filling in this – all these discussions we've had up until now have all been based on total pop. I didn't look at race [98] at all on the computer when we were adding folks to these districts or subtracting folks from these districts.

So at this point, I've basically just been looking at total pop and where do you get the total pop to get the districts back to ideal population. So at that point, there was no discussion of race. It was all a discussion of total pop.

Q. You say "at this point." Where are we talking in the timeline?

A. Up until – up until we finished the map.

Q. Finishing the map being the week before the special session?

A. Correct.

Q. So is it your testimony that you did not look at race at all in 2021 before submitting the maps to the special session?

A. No, I did not look at it up until the week before we submitted the maps, when at that point we

did turn on race and look at the racial breakdowns in the various maps.

Q. Why did you look at the racial breakdown that week before the special session?

[99] A. Well, to – obviously, we wanted to see what the, you know, outcomes of our changes were.

Q. What do you mean?

A. We wanted to see what – the changes we had made to get the population balanced among all these districts, if it changed any of the, you know, racial makeup of the districts.

Q. Why did you want to know that?

A. Well, one of our guidelines is to comply with the Voting Rights Act.

Q. And you say “we wanted.” Who is “we”?

A. The two co-chairs, myself, and legal counsel.

Q. “Legal counsel” being Mr. Dorman -

A. Yes.

Q. – Walker?

A. Yes.

Q. And prior to that week before the special session, it’s your testimony that you did not look at any of the racial data at all for any of the districts in drawing the 2021 congressional map?

JA276

A. That's correct.

Q. What data did you look at?

A. Just – just total pop and geography.

[100] Q. Anything else?

A. That's it.

Q. Other than modifying the existing district lines to account for population changes, did you make any other changes from the 2011 congressional map?

A. I'm not sure I follow that.

Q. You made changes to the 2011 congressional map for the 2021 map based on changes in population, correct?

A. Correct.

Q. Did you make any changes based on any other factors?

A. Are we talking – we're talking the 2021 map?

Q. Correct. So in drawing the 2021 map, you made certain changes from the prior map based on changes in population, correct?

A. Correct.

Q. Did you make any changes based on any other factors?

A. No. I didn't make any changes. Obviously, where members lived was a consideration. I certainly

would be mindful – when I was moving a precinct in Jefferson County, for example, I

* * *

[153] Q. What is your definition of a community of interest?

A. My definition of community of interest, it can be geographic, it can be economic, where people work, it can be racial, it could be geography, it could be people on the bay, for example, for Mobile and Baldwin counties. A host of – a host of communities of interest.

Q. What do you consider to be communities of interest in Alabama?

A. All those things I just listed.

Q. Is there any sort of particular communities of interest that are well established or a list of any of these? Or is this just something that is subjectively known but doesn't really exist in writing anywhere?

A. I don't know of a definitive list of all the communities of interest in Alabama.

Q. Are there any specific communities of interest that come to mind for you right now?

A. No, other than the ones I listed. I mean, precincts can be – counties are, I guess, communities of interest sometimes. I mean, it's -there are a whole host of things.

Q. It sounds like communities of interest [154] can be somewhat fluid. Is that fair to say?

A. It is fair to say.

Q. One area, say, where we're sitting right now in Montgomery, could be part of three, four, five, six different communities of interest depending on what factors you're looking at?

A. Yeah, whether they're economic or racial or social or everybody roots for the same football team, I suppose.

Q. Do they?

A. No.

Q. I see. I see. That would be a community of interest perhaps.

Are you familiar with the black belt? You mentioned that earlier.

A. I am.

Q. What is the black belt?

A. It's a group of mostly rural counties that have a – for the most part have a majority black population.

Q. Do you know what counties are in the black belt?

A. I'm not sure I can list every one. But yeah, in general, I do.

Q. What counties would you say are in the [155] black belt?

A. I would say Sumpter, Greene, Choctaw, Marengo, Hale, Perry, Dallas, Wilcox, Lowndes, I guess Macon and Bullock. Some would say Montgomery.

Q. Do you consider the black belt to be a community of interest?

A. I do.

Q. So in drawing your map, what did you do to make sure that your plan complies with this policy, that it respected communities of interest?

A. Again, I mean, because there are so many different communities of interest, they're not – I mean, no plan is going to respect all of them. So there are trade-offs.

There are also – you know, the entire black belt I imagine if you made into a congressional district would accomplish – would hit up against other one person, one vote issues and other issues in here, as well. So they are sometimes in conflict. So you can't – you can't satisfy all communities of interest.

Q. Did you have to make any specific modifications to your map to make sure that you were respecting communities of interest?

A. No. Although, again, I tried to keep, [156] for example, the Muscle Shoals area together in the – in the 4th District when we split Lauderdale. Not that it was at issue, but the people in Mobile and Baldwin very much wanted to be together because they share

the bay. But that didn't require a change. It just is a . . .

Q. Other than the modification for the Muscle Shoals community, are there any other specific modifications that you felt like you made in drawing the 2021 map?

A. No, not specifically.

Q. Does your map split any communities of interest?

A. Oh, I'm sure it does. I mean, all maps split some communities of interest.

Q. And part of that is because of what we just discussed, that communities of interest can mean lots of different things?

A. To different people, I'm sure.

Q. Looking at the bottom of Section II j(iii,) that third policy, it gives a definition. It says, "The term communities of interest" -excuse me.

It says, "A community of interest is defined as an area with recognized similarities of [157] interests, including but not limited to ethnic, racial, economic, tribal, social, geographic, or historical identities. The term communities of interest may in certain circumstances include political subdivisions such as counties, voting precincts, municipalities, tribal lands and reservations, or school districts."

Did you review any ethnic, racial, tribal, or other similar data to identify communities of interest?

A. I did not.

Q. Moving to the next policy, the fourth policy, Section II j(iv.) It states, “The legislature shall try to minimize the number of counties in each district.”

I think that’s pretty self-explanatory. But what is your understanding of what that policy requires?

A. Yeah, that’s sort of a compactness thing. I was trying to keep the fewest number of counties necessary to – and it’s not always -there are other – the next one down says “preserving cores of existing districts.”

I mean, some of these things come into conflict. But to where possible, I tried to deal in

* * *

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

EVAN MILLIGAN, et al.,

Plaintiffs,

vs.

JOHN H. MERRILL, et al.,

Defendants.

No. 2:21-cv-01530-
AMM

DECLARATION OF BENARD SIMELTON

(Filed Dec. 15, 2021)

I, Benard Simelton, declare as follows based on my personal knowledge:

1. My name is Benard Simelton and I am the President of the Alabama State Conference of the NAACP (“Alabama NAACP”). The Alabama NAACP is a Plaintiff in this matter.

2. The Alabama NAACP is a non-profit and non-partisan organization and a state conference of the National Association for the Advancement of Colored People. The Alabama NAACP was founded in 1913 and is the oldest civil rights organizations in the State. The Alabama NAACP works to ensure the political, educational, social, and economic equality of African Americans, other minorities, and all residents of Alabama. We are committed to the removal of all discriminatory barriers to the democratic process, and the full enforcement of federal laws securing the right to vote.

3. The Alabama NAACP fulfills its mission by seeking to increase voter registration and voter turnout, engaging in voter registration and “get-out-the-vote” drives, and publicly advocating to address the adverse effects of racial discrimination in voting and to seek its elimination.

4. I have served as the President of the Alabama NAACP since October 2009. During my time as President, I have overseen the Alabama NAACP’s voter registration, voter education and voter mobilization efforts.

5. As a non-profit organization, the Alabama NAACP raises money from private donors and membership fees. The Alabama NAACP has two paid staff member but relies primarily on the assistance of volunteers, such as myself, to meet its goals. As a result, the Alabama NAACP’s monetary, personnel and time resources are very limited.

6. The Alabama NAACP has thousands of members in Jefferson County, the Black Belt and other counties across the state. Most of the members of the Alabama NAACP are Black registered voters. The Alabama NAACP’s members include registered voters who reside and vote in CDs 1, 2, 3, and 7. Robert Clifton is a Black registered voter and President of the Mobile County NAACP Branch, currently located in CD 1. Bobby Mays is a Black registered voter and President of the NAACP Elmore County Branch #5026, currently located in CD 2. Alozo Bullie is a Black registered voter and President of the Macon County Branch NAACP,

currently located in CD 3. Lisa Young is a Black registered voter and President of the Tuscaloosa County NAACP Branch, currently located in CD7.

7. Members of the Alabama NAACP include Black registered voters who I understand would reside in the illustrative second majority-Black district presented by Plaintiffs in this case.

8. The Alabama NAACP proposed a map in October that would provide for two majority-minority districts prior to the state legislature's special session to take up the redistricting issue.

9. The state's redistricting process was rushed and did not allow for adequate input from the Black community. Members of the NAACP attended reapportionment hearings and reported that Black state representatives did not have much time to present their support for the NAACP's map. It was as if the Committee members minds were made up before public discussion took place. The plan proposing a second Black congressional district was rejected without much debate or attempt to understand the justification for it. It seemed as though acknowledging the NAACP's plan and listening to the opposition against HB-1 was a formality, but not seriously considered.

10. In the state's proposed maps, Black voters are packed into CD 7 where they are overrepresented. With two districts, economic and political interests would be better represented. Black voters need to have more than one representative from the state of Alabama to represent their interests in our US Congress.

11. The Black Belt is a community of interest that should be kept together as much as possible in re-districting. The Black Belt is a collection of majority-Black counties that runs through the middle of Alabama. The Black voters in the Black Belt share a rural geography, concentrated poverty, unequal access to government services, and lack of adequate healthcare.

12. Medicaid expansion is an economic interest that connects Black voters in the Black Belt and elsewhere in Alabama. It is estimated that there are over 300,000 total population in Alabama who do not have health care because Medicaid has not been expanded. Those who do not have affordable healthcare, are disproportionately African-American. Currently, Terri Sewell is the only Congressional representative advocating for Medicaid expansion.

13. Criminal justice reform is another issue that ties Black voters together. African-Americans are incarcerated more than any other race, based on percentage, and receive harsher sentences. With additional representation in Congress, Black voters in Alabama could exert more political pressure on the federal and state governments to develop a fairer criminal justice system. Currently, Representative Sewell is the only representative from the state that understands there is a problem.

14. Currently, Representative Sewell is the only one representative from the state giving voice to the issue that the Black Belt and the other Black

JA286

communities in Alabama need more economic opportunity and funding.

15. Moreover, Black Alabamians continue to face higher rates of infection and death from COVID-19 due to disparities in access to healthcare and other forms of structural inequality.

16. None of the representatives, besides Representative Sewell, voted for the John Lewis Advancement Act of 2021 that would improve voting opportunities for African-Americans and other minorities.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Sworn to this 14th day of December, 2021.

/s/ Benard Simelton
Benard Simelton

JA287

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

EVAN MILLIGAN, et al.,

Plaintiffs,

vs.

JOHN H. MERRILL, et al.,

Defendants.

No. 2:21-cv-01530-
AMM

DECLARATION OF SHALELA DOWDY

(Filed Dec. 15, 2021)

I, Shalela Dowdy, declare as follows based on my personal knowledge:

1. I am a resident of Mobile, Alabama and I am registered voter in the City of Mobile, Alabama. I thus reside and vote in elections for U.S. Congressional District 1.

2. I identify as Black or African-American.

3. I was born and raised in Mobile, Alabama which has allowed me to have a vested interest in the city and the state that I call home.

4. I earned my Bachelor's Degree from the United States Military at West Point. Following that, I served on active duty for 6 years. While attending college and serving on active duty, I lived in 5 different states and was deployed to the Middle East. I always remained a resident of Alabama and continued to vote

in Alabama. Upon returning to Alabama, I immediately noticed the lack of representation in many areas of leadership and elected position in particularly at the Congressional Level.

5. For several years, I have been actively in engaged in Voter Outreach where I have focused on educating voters in my local community about the importance of participating in every election, helping with registering Alabamians to vote, and assisting with the mobilizing voters by providing those without transportation with the means to access the polls to vote on election day.

6. For the past 6 months, I have participated in the CROWD (Community Redistricting Organizations Working for Democracy) Fellowship sponsored by the Southern Coalition of Social Justice, where I am assigned to Lower Alabama which consists of counties in Congressional District 1. The redistricting work that I do is centered around educating the community on the process, how it impacts them, and why they should be actively involved in the process.

7. I, along with other Black people in both the City of Mobile and Mobile County, can trace our family roots back to the Black Belt areas of Alabama such as Montgomery County, Dallas County, Lowndes County, Wilcox County and other counties in the area.

8. With many Black people in the Mobile area having family ties to the Black Belt, it is a clear indication that both areas are a community of interest and should be kept whole in one district. Black people in

Mobile and Black people in the Black Belt share history and similar struggles when it comes to combating adversity and fighting inequality in the state of Alabama.

9. The issues of education, healthcare, and the equitably distribution of infrastructure have been devastating to the Black communities residing in the Black Belt and Mobile. All of this, in addition to not being able to elect someone who will fight for the things that Black people in the Black Belt and Mobile find important, results in the demographic that I belong to being helpless and disempowered.

10. I spoke at the public hearing that the State Reapportionment Committee held in Mobile in September 2021. My comments were about the packing and diluting of the Black vote in the Congressional District 7 and the need for an effort to be made for a second majoring minority Congressional District.

11. I virtually attended about twenty other public hearings that were held around the state and heard the same concerns mentioned by numerous other Black Alabamians. We made our issues known to the Committee leaders to no avail. Having a second Congressional District where a Black candidate of choice could be elected would allow for proper representation of what the demographics of Alabama truly look like. It will give a voice and hope to a group of people who have always had to fight for their voice to be heard.

JA290

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Sworn to this 14th day of December, 2021.

/s/ Shalela V. Dowdy
Shalela V. Dowdy

JA291

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

EVAN MILLIGAN, et al.,

Plaintiffs,

vs.

JOHN H. MERRILL, et al.,

Defendants.

No. 2:21-cv-01530-
AMM

DECLARATION OF EVAN MILLIGAN

(Filed Dec. 15, 2021)

I, Evan Milligan, declare as follows based on my personal knowledge:

1. I am a resident of Montgomery, Alabama and I am registered voter in the City of Montgomery. I thus reside and vote in elections for U.S. Congressional District 7.

2. I identify as Black or African-American.

3. I grew up in Birmingham and Montgomery, Alabama. While in Birmingham, I lived in the College Hills neighborhood, which is located across the street from Birmingham-Southern College. While in Montgomery, I primarily lived in predominately African-American communities located in the downtown and southwestern areas of the city, particularly Centennial Hill, Rosa Parks Combined Communities, Haardt Estates, and South Hull. Over my lifetime, these areas

have been associated with Congressional Districts 2 and 7.

4. I am the Executive Director of Alabama Forward. Alabama Forward is a state-based 501(c)(3) civic engagement coordinating table committed to advancing movement towards greater freedom and progressive, solution-oriented policy among a diverse coalition of Alabama-based partner organizations, so that every Alabamian can engage in the democratic process. In pursuit of this mission Alabama Forward prioritizes race and gender equity to engage every Alabamian in all aspects of our democracy.

5. The vision of the Alabama Forward 501(c)3 Network is to boost civic and political participation through collaborative voter engagement and election reform efforts while building the capacity of participating organizations to more effectively communicate about and engage in their work. Alabama Forward also prioritizes supporting compelling emerging leaders and organizations who have not historically received more traditional forms of support.

6. The Black community dispersed throughout Montgomery is a community of interest. While segregation and redlining policies initially concentrated the bulk of Montgomery's Black communities downtown, and immediately north, west, and south of there, as economic and residential opportunities have become more accessible, Black residents have settled in every zip code associated with Montgomery. Today, in addition to West and North Montgomery neighborhoods

that have been predominately Black for all their existence, there are large pools of Black residents dispersed throughout the city in non-contiguous locations.

7. Black Montgomerians are often deeply connected to many of the military, government, educational, civic, and cultural institutions located in inner-city Montgomery, particularly in the downtown area. Black families gather at the downtown Crampton Bowl for Friday Night football, assorted sports championships, and multi-generational tailgating prior to big games. This community of interest educates their children at Valiant Cross Academy, a private Christian boy's academy located directly across the street from the Alabama Supreme Court and state appellate courts. Black Montgomerians have multigenerational and diverse ties to Alabama State University ("ASU") an HBCU, where they work, attend school, send their children to the Headstart and prekindergarten programs at Zeilia Stephens Early Childhood Center, enjoy football classics, and utilize the Dunn-Oliver Acadome and other campus venues for assorted cultural events including concerts, fraternity/sorority galas, high-school graduations, theater, and hosting notable public speakers. Social service providers and community development agencies pivotal to many Black Montgomery families are located in the downtown area, including the Community Action Agency that coordinates the Headstart programs located throughout the city; the Montgomery Public School Board offices; municipal government offices. Downtown Montgomery and the immediately adjacent areas

also feature some of Montgomery's oldest and most vibrant Black faith communities, including Pilgrim Rest Baptist, First Avenue Baptist Church, Freewill Baptist Church, Dexter Avenue Baptist, St. John's AME Church, and Resurrection Catholic Church. Immediately west and east of downtown are Gunter and Maxwell Air Force Base where kids like me chose to serve their country in service of a brighter future for their country and themselves. These military installations provide considerable employment, educational, and recreational opportunities to Montgomery's Black servicemembers and civilians.

8. In addition, downtown Montgomery also features numerous civil rights museums and institutions, including the Dexter Avenue King Memorial Legacy Center and Parsonage, the Rosa Parks Museum and Library, the EJI Legacy Museum, and the National Memorial for Peace and Justice. These sites provide historical information that is important to the identities of Black Montgomerians and many family reunions organized by Black residents routinely feature trips to these sites. These sites recognize the profound consequences for both Black and white people of chattel slavery, racial terror lynchings, and racial segregation. Irrespective of what part of town people are sleeping in Montgomery, these are the places where the majority of Black residents are educating their children, worshiping, working, recreating, and seeking cultural enrichment.

9. When I was a child, Representative Earl Hilliard became the first Black congressperson to

represent an Alabama district since Reconstruction and I recognized his importance in the creation of District 7. The subsequent election of Representative Arthur Davis was also impactful due to his unique staff of diverse, passionate, and inspiring younger people.

10. I've experienced an intimate bond between Black communities in Montgomery and those based throughout the Black Belt. My first exposure to this connection was my own family. Our family routinely returned to our family cemetery in Lowndes County as a way of maintaining our connection to our origins. My wife and I chose to get married in the Lowndes County Courthouse due to our sense of cultural connection to this area. Our relationship with Lowndes County is not unique. Most Black families in Montgomery who are originally from this area have similar stories.

11. There are also civil rights and advocacy connections between Montgomery and the rural Black Belt communities. There are generations of connections between communities in Dallas, Wilcox, Hale, Greene, Choctaw, Lowndes, Marengo, and Perry counties; and institutions in Montgomery. For example, the Federation of Childcare Centers of Alabama was headquartered in Montgomery, but founded by childcare center program leaders based throughout the Black Belt; and the connections between civil rights advocates in Dallas, Wilcox, and Hale counties and Black churches based in Montgomery.

12. Montgomery's demographics are also shaped by the same legacy of plantation slavery that shapes

the rural Black Belt. Black communities in the Black Belt have all experienced uniquely high rates of poverty, and poor health outcomes. These communities have relied on similar cultural and religious institutions for inspiration and resiliency. For many, Alabama State University has served as a multigenerational transition space for people emerging from Black families in the Black Belt who are interested in gaining skills and overcoming historic barriers.

13. In August and September of 2021, I participated in several media forums with the League of Women Voters to discuss redistricting.

14. As Executive Director of Alabama Forward, I participated in bi-weekly briefing on the redistricting process beginning on April 30, 2021 to discuss public outreach and education around redistricting.

15. Between September 1 and 16, long before the Committee released any draft maps or proposals, the Legislative Reapportionment Office held 28 public hearings across the state. All but one hearing – held at 6:00 pm at the Statehouse in Montgomery – was held between the normal workday hours of 9:00 am to 5:00 pm, i.e., times when the general public was least able to attend.

16. Khadidah Stone and I submitted email testimony to the Reapportionment committee on Thursday, September 16, 2021, the last Thursday of the hearings.

17. After submitting a request for a public hearing to the Senate Finance and Taxation General Fund

Committee, I arrived to testify before that committee when it met on Tuesday, November 2, but they were not taking public testimony.

18. On October 29, 2021, the Alabama House State Government Committee met to discuss the Reapportionment Committee's proposed districting plan for Alabama's U.S. House delegation.

19. During the hearing on the bill, I asked Representative Chris Pringle whether the Reapportionment Committee conducted racial polarization studies on any of the maps. Representative Chris Pringle said "some of the districts that we were concerned about," but that they "were still working on it."

20. In November, I testified in person at the House hearing on how the Committee assessed and utilized the feedback from the public listening sessions. I asked if the Committee considered community maps and when the public could receive the results of the RPV research.

21. When I asked whether the Committee lacked sufficient data to determine whether the map they introduced would violate federal law, Representative Pringle did not answer.

22. Alabama's 2021 special redistricting legislative session began on October 28, 2021. By November 3, 2021, bills redistricting the Alabama U.S. Congressional map, Alabama Senate map and Alabama House of Representatives map were passed by both houses of

JA298

the Alabama legislature and sent to Governor Kay Ivey's office for approval and signing.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Sworn to this 14th day of December, 2021.

/s/ Evan Milligan
Evan Milligan

JA299

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

SUPPLEMENTARY DECLARATION
OF JOSEPH BAGLEY, PHD

REBUTTAL OF REPORT
OF THOMAS M. BRYAN

(Filed Dec. 21, 2021)

Thomas M. Bryan asserts in his report for the defendants that Mobile and Baldwin Counties constitute an inseparable community of interest (“COI”) and that splitting these counties, as in the *Milligan* plaintiffs’ proposed plan, would “cause the most harm” among county splits in said plan. Mr. Bryan also alludes to the Black Belt region of the state but does not explain the historical, demographic, or socio-economic characteristics of the region. In my opinion, the Bryan report fails to describe the Black community and the Black Belt and its close relationship to the Black people of Mobile.

The Black Belt is a region that stretches across America’s Deep South, from South Carolina to Texas. It is named for its rich black soil. Though the majority of the American Black Belt’s inhabitants are also Black people, the descendants of the enslaved who were forced to work that land before and during the Civil War.

The Alabama Black Belt extends, roughly, from Russell and Barbour Counties in East Alabama, through Montgomery County, to an expanding area

covering Pickens County to Washington County on the Mississippi line.

As Native Americans were gradually and forcibly removed from the lands west of the Ocmulgee River in the late 18th and early 19th centuries, white settlers realized that the Black Belt's soil, and the Deep South's climate, were perfect for growing long-staple cotton. At the same time, the invention of the cotton gin and the beginnings of industrialization increased demand for that crop, and a decline in the tobacco market created a "surplus" of enslaved Black people in the older plantation areas of the Tidewater of Virginia and North Carolina.

White settlers began to flood into the state of Alabama when most of the remaining Creek Indians were forced out via the Indian Removal Act of 1830. By then, the United States government had banned the importation of slaves from abroad, so many settlers brought enslaved Black people with them from the older plantation areas of the Upper South. Others purchased them from slave markets in Montgomery, Mobile, Jackson, and other cities. American chattel slavery expanded dramatically between that time and the Civil War, giving rise to the "Cotton Kingdom" of the antebellum era when cotton was America's most valuable export and enslaved Black people were its most valuable commodity. The Black Belt of Alabama became home to not only the wealthiest white plantation owners in the state, but to some of the wealthiest individuals in the young nation, some of whom held hundreds of people in bondage.

When the 13th Amendment brought an end to chattel slavery, land was never systematically redistributed from white landowners and given to newly freed Black people. Formerly enslaved Black people became landless tenant farmers, beholden to their former masters. And when Alabama replaced its constitution in 1875 and again in 1901, it was the “Bourbon redeemers” of the Black Belt region, hyper-wealthy white landowners, who pushed hardest for a document that would protect white supremacy. Black people were the overwhelming majority in most areas. The Black Belt’s white landowners feared that allowing Black people to vote freely would lead to land reform and their political and financial ruin. Thus, they lobbied for protections against white property tax dollars for Black education and for the total disenfranchisement of Black citizens.

When the nonviolent movement for civil rights reached its peak in the mid-1950s, it was the Black Belt where Black activists faced the most formidable reprisals – violent and economic. The Black Belt was also the seedbed of both the Ku Klux Klan and the Citizens’ Council in the state. The Citizens’ Councils ensured that any Black people engaged in civil rights activism received “the pressure,” meaning they would be fired by white employers, evicted by white landowners, denied credit by white bankers, etc.¹ “Bloody Sunday” occurred in the Black Belt city of Selma, and the related murder of Viola Liuzzo occurred in nearby

¹ Joseph Bagley, *The Politics of White Rights: Race, Justice, and Integrating Alabama’s Schools* (Athens: University of Georgia Press, 2018).

Lowndes County, dubbed “Bloody Lowndes” for the violence meted out against voting rights protestors.² White people fled public schools in the Black Belt rather than integrate and even fled some cities entirely rather than share local governmental power.³

The Black Belt was also the site of Black citizens’ efforts to organize and to seek access to the franchise and to equal educational opportunity. When the National Association for the Advancement of Colored People encouraged local branches to petition school boards to address the Supreme Court’s *Brown v. Board of Education* decision in 1955, Black people in Butler, Russell, Bullock, and Dallas Counties were among those to answer the call (Black activists in Mobile did the same). The Lowndes County Freedom Association was founded in 1965 and the National Democratic Party of Alabama was formed soon thereafter with both independent focused on running Black candidates in elections in the Black Belt.⁴

White backlash to Black activism took the form of violence and economic reprisals, which contributed to Black Alabamians’ migration from the Black Belt to Mobile and elsewhere as early as the end of the Civil

² Hasan Kwame Jeffries, *Bloody Lowndes: Civil Rights and Black Power in Alabama’s Black Belt* (New York: New York University Press, 2010); James P. Turner, *Selma and the Liuzzo Murder Trials: The First Modern Civil Rights Convictions* (Ann Arbor: University of Michigan Press, 2018).

³ Bagley, *The Politics of White Rights*.

⁴ Bagley, *The Politics of White Rights*; Jeffries, *Bloody Lowndes*.

War. This migration of Black people from the Black Belt to Mobile continued through the end of the Nineteenth Century and into the Twentieth Century.

The historian Wayne Flynt has described a “massive hemorrhaging of people,” mostly Black people, from the Black Belt, in the early Twentieth Century. As Flynt explains, “These internal migrants generally headed for cities.” This would include Black people who left the Black Belt for Mobile in significant numbers during the Great Depression, when white landowners refused to pass down federal aid to their sharecropping tenant farmers. In the second half of the Twentieth Century, consolidation of land, mechanization, and the rise of the Sunbelt generated, in Flynt’s words, “a hemorrhaging of people [from the Black Belt] even more severe” than the previous one. Again, Black people left the Black Belt for Mobile. By the end of the century, more Black people in Alabama lived in cities than in rural areas. Many Black families in Mobile are Black Belt migrants or the descendants thereof.⁵

As the political scientist Richard Pride writes of Mobile, “Its roots followed the rivers north into the heart of the black belt . . . where cotton and timber grew abundantly, and planters, rednecks, and blacks marked all the society that people acknowledged.” Pride continues, “The city had its face turned toward

⁵ Wayne Flynt, *Alabama in the Twentieth Century* (Tuscaloosa: University of Alabama Press, 2004), pp. 115, 143, 177.

the world, but it nevertheless grew out of the Old South.”⁶

White flight accelerated significantly in Mobile when the city’s long-running school desegregation case finally yielded positive results for Black plaintiffs in the early 1970s, at the same time that Black Belt public school systems were experiencing similar backlash and flight.⁷ As in the Black Belt, white flight has left most public schools east of I-65 in Mobile overwhelmingly Black. The Black communities of Mobile and the Black Belt share significant historic, demographic, and socioeconomic interests.

I am aware that the State Board of Education (“SBOE”) elects eight-members from single-member districts, including two majority Black districts. I am also aware that the parties in this case have agreed that, “[i]n each election since 2011, a Black Democrat won a majority of Black voters and the election in Districts 4 and 5 of the SBOE” and that “District 5 of the SBOE Plan connects the City of Mobile to the Black Belt Counties.”⁸ The fact that most Black voters in SBOE District 5 vote for the same candidates and the

⁶ Richard Pride, *The Political Use of Racial Narratives: School Desegregation in Mobile, Alabama, 1954-1997* (Champaign: University of Illinois Press, 2002); Scotty E. Kirkland, “Pink Sheets and Black Ballots: Politics and Civil Rights in Mobile, Alabama, 1945-1985,” M.A. Thesis (University of South Alabama, 2009).

⁷ *Davis v. Mobile Board of School Commissioners*, 430 F.2d 883, 889 (5th CCA, 1970), reversed, 402 U.S. 33 (1971).

⁸ Joint Stipulated Facts for Preliminary Injunction Proceedings, *Milligan v. Merrill*, Dec. 7, 2021.

State Legislature's decision to place the Black communities in the City of Mobile and the Black Belt in the same SBOE district are consistent with my conclusions here.

In his analysis of Mobile and Baldwin Counties, Mr. Bryan relies exclusively upon the previous testimony of U.S. Congressional Representative Bradley Byrne and former Representative Jo Bonner, two white men elected from the overwhelmingly white 1st District who have asserted that Mobile and Baldwin form a sensible COI. But the population of the Mobile County east of Interstate 65 is overwhelming Black and shares little today with the rest of the metropolitan area, which is predominately white. And to the extent that western Baldwin County shares economic interest with the city, it is because safely white communities like Fairhope, Spanish Fort, and Daphne became white flight destinations when courts called for compulsory school desegregation and white residents fled from the possibility of their kids attending majority Black Williamson High and Vigor High or a substantially Black Murphy High.⁹ The remaining areas of Baldwin County are either sparsely populated or are Gulf Coast beach tourist destinations that have little

⁹ Bagley, *The Politics of White Rights*; Brian Duke, "The Strange Career of Birdie Mae Davis: A History of a School Desegregation Lawsuit in Mobile, Alabama, 1963–1997," M.A. Thesis, Auburn University (2009).

JA306

meaningful connection to the city of Mobile save for waterfront access.¹⁰

In conclusion, it is my opinion that the Black communities in the Black Belt and Mobile County have longstanding, organic, and meaningful connections.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

Respectfully submitted and executed December 20, 2021.

/s/ Joseph Bagley
JOSEPH BAGLEY, PhD

¹⁰ Allen Tullos, *Alabama Getaway: The Political Imaginary and the Heart of Dixie* (Athens: University of Georgia Press, 2011); Harvey Jackson, *The Rise and Decline of the Redneck Riviera: An Insider's History of the Florida-Alabama Coast* (Athens: University of Georgia Press, 2013).

JA307

Response to Report of Thomas Bryan

Moon Duchin

Professor of Mathematics, Tufts University

Collaborating Faculty in

Race, Colonialism, and Diaspora Studies

Senior Fellow, Tisch College of Civic Life

December 20, 2021

1 Background and assignment

I am a Professor of Mathematics and a Senior Fellow in the Jonathan M. Tisch College of Civic Life at Tufts University. I have previously submitted an expert report in the current case and have been asked by counsel to provide additional material providing my opinion on the report of Thomas Bryan, particularly focused on his discussion of compactness metrics and of racial categories on the Census.

2 Compactness metrics

Part 4(D) of the Thomas Bryan report (pages 29-30) covers the topic of compactness metrics. In that Part, four compactness metrics are presented: Polsby-Popper, Schwartzberg, Reock, and Convex Hull.

2.1 Erroneous calculation

The Schwartzberg scores are calculated incorrectly in Mr. Bryan's report. Quoting the original 1966 paper where the score was proposed by Joseph Schwartzberg,¹

¹ Joseph E. Schwartzberg, Reapportionment, Gerrymanders, and the Notion of Compactness, 50 Minn. L. Rev. 443, 452 (1966).

For any given two dimensional area the most compact shape is a circle. No other geometric figure has as low a ratio between its perimeter and area. The relative compactness of any other figure may be determined by finding the ratio of its perimeter to the perimeter of a circle of equal area. The ratio serves as an index of compactness. The index number of a circle is taken to be one. All other indices are higher and represent varying degrees of departure from perfect compactness. Thus, the index number of a perfect square is 1.13, of an equilateral triangle 1.29, and of a perfect five point star 1.95.

As this makes clear, the Schwartzberg score takes a minimum value of 1 (realized only for perfect circles); all other shapes have values above that. In the Thomas Bryan report, all districts are reported to have Schwartzberg scores less than one. Mr. Bryan supports his calculation by citing the website (fisherzachary.github.io/public/r-output.html) of an undergraduate student project, and including screenshots from that project in his report.

2.2 Questionable combination

In addition to reporting scores incorrectly, Mr. Bryan also performs an operation that violates best practices in statistics and mathematical modeling: he adds scores that are in different units to create a “Total.” Polsby-Popper scores are in dimensionless units that can be interpreted as a proportion of a certain circle’s area; Reock scores are in proportion of a different circle’s area; Convex Hull scores are in percentage of a

certain polygon's area. It is unclear how one might interpret their sum, as the standard practice in quantitative analysis would be to only compute sums and averages of scores in like units.

The practice of summarizing multiple compactness scores of numerous districts in a single number is not just abstractly discouraged, but has a concrete impact: it serves to hide the fact that different compactness scores reward or penalize different kinds of features. This can mislead readers into thinking that two plans are directly comparable when in fact one is stronger in some ways while the other is stronger in other ways. In a case like this, the appropriate conclusion would be that the compactness comparison is marked by tradeoffs.

3 Racial population categories

Part 3 of the Thomas Bryan report (pages 9-13) discusses Census Race Definitions, tallying population with categories that he calls "Black Alone" and "All Black." Mr. Bryan writes on p.10 that "the "alone" definition has been most defensible from a political science / Gingles 2 voting behavior perspective"—here, it is unclear what references support his claim, from political science or any other scholarly or practitioner literature.

As Mr. Bryan acknowledges, the ability to use multiple categories to self-identify race in the Census is relatively recent. I note the Decennial Census treats Black as a checkbox, i.e., a yes/no question (see Figure 1). Thus, the Any-Part-Black definition (AKA "All

Black”) can be very simply described: *it contains all residents who, when presented with the Yes-or-No question about whether they are Black, answered Yes.*

9. What is Person 1's race? Mark one or more boxes.

White

Black, African Am., or Negro

American Indian or Alaska Native — *Print name of enrolled or principal tribe.* ↴

<input type="checkbox"/> Asian Indian	<input type="checkbox"/> Japanese	<input type="checkbox"/> Native Hawaiian
<input type="checkbox"/> Chinese	<input type="checkbox"/> Korean	<input type="checkbox"/> Guamanian or Chamorro
<input type="checkbox"/> Filipino	<input type="checkbox"/> Vietnamese	<input type="checkbox"/> Samoan
<input type="checkbox"/> Other Asian — <i>Print race, for example, Hmong, Laotian, Thai, Pakistani, Cambodian, and so on.</i> ↴	<input type="checkbox"/> Other Pacific Islander — <i>Print race, for example, Fijian, Tongan, and so on.</i> ↴	

Some other race — *Print race.* ↴

Figure 1: The race question on the Decennial Census form in 2010.

I further note that Plan A, the first alternative plan presented in my report of December 10, has two majority-Black districts by any definition of Black that is plausibly used for VRA purposes: Any-Part-Black VAP, Black-Alone VAP, or Black Citizen VAP.²

² As explained in the supplemental material to my initial report, the BCVAP is estimated by using a special tabulation of the American Community Survey to calculate the citizenship rate for Black residents in the tract to which each block belongs, then applying that rate to the BVAP, in this case the Any-Part-Black VAP.

JA311

	Black-Alone VAP	Any-Part-Black VAP	Black Citizen VAP
CD2	.5001	.5137	.5205
CD7	.5030	.5150	.5240

Table 1: Statistics for CD2 and CD7 in Plan A

Future inquiry via voter registration

There is another source that could be useful to support the question of Black self-identification in Alabama: the voter registration file, in which citizens are asked to identify their race with a single choice. Counsel is currently attempting to secure a geocoded voter registration file. If I am provided with that resource in the near future, I hope to provide a supplemental report with the corresponding analysis.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of December, 2021.

/s/ Moon Duchin
Moon Duchin

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

MARCUS CASTER, LAKEISHA
CHESTNUT, BOBBY LEE
DUBOSE, BENJAMIN
JONES, RODNEY ALLEN
LOVE, MANASSEH POWELL,
RONALD SMITH, and,
WENDELL THOMAS,

Plaintiffs,

v.

JOHN H. MERRILL, in his
official capacity as Alabama
Secretary of State,

Defendant.

Case No.

2:21-cv-751-WKW-JTA

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(Filed Nov. 4, 2021)

Plaintiffs Marcus Caster, LaKeisha Chestnut, Bobby Lee DuBose, Benjamin Jones, Rodney Allen Love, Manasseh Powell, Ronald Smith, and Wendell Thomas file this Complaint for Declaratory and Injunctive Relief against Defendant John H. Merrill in his official capacity as the Alabama Secretary of State, and allege as follows:

1. Plaintiffs bring this voting rights action to challenge HB 1 (2021 Second Special Session), which establishes new congressional districts for Alabama

based on the 2020 Census, on the grounds that it violates Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, because it strategically cracks and packs Alabama's Black communities, diluting Black voting strength and confining Black voting power to one majority-Black district.

2. Between 2010 and 2020, Alabama's Black population grew 6.5 percent. During the same period, the state's white population fell by 1.7 percent, meaning majority-Black Alabamians drove all of Alabama's population growth over the last decade. And yet the state's newly enacted congressional redistricting plan further entrenches the state's white majority by creating only a single majority-Black district in the state, despite Alabama's Black population being sufficiently numerous and geographically compact to support two majority-Black congressional districts. Indeed, while Black Alabamians now compose more than 27 percent of the state's population and nearly 26 percent of the state's voting age population, they have the opportunity to elect a candidate of their choice in just one out of seven districts.

3. HB 1 is just the most recent enactment in Alabama's long history of discriminatory voting laws. Black Alabamians have long suffered from voting discrimination and vote dilution and as a result have endured systemic neglect of the issues and needs that deeply affect their community.

4. The state's newly enacted congressional redistricting plan deepens these issues by creating only a

single majority-Black district. HB 1 “cracks” Black voters between the First, Second, and Third Congressional Districts, and “packs” Black voters into the Seventh Congressional District (“CD 7”) despite—or perhaps because of—the fact that the Black population in these districts is sufficiently numerous and geographically compact to form a majority of the voting age population in a second district. Additionally, there is widespread racially polarized voting in Alabama, and when considered against the totality of the circumstances, the enacted plan’s failure to create two majority-Black districts dilutes the Black vote in violation of Section 2 of the Voting Rights Act.

5. Accordingly, Plaintiffs seek an order (1) declaring that HB 1 violates Section 2 of the Voting Rights Act; (2) enjoining Defendant from conducting future elections under HB 1; (3) ordering a congressional redistricting plan that includes two majority-Black congressional districts; and (4) providing any such additional relief as is appropriate.

JURISDICTION AND VENUE

6. Plaintiffs bring this action under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

7. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the laws of the United States and involve the assertion of deprivation, under color of state law, of rights under federal law.

8. This Court has personal jurisdiction over Defendant, who is sued in his official capacity and resides within this state, pursuant to Fed. R. Civ. P. 4(k)(1)(A).

9. Venue is proper because a substantial part of the events that give rise to Plaintiffs' claims have occurred, and will occur, in this District. 28 U.S.C. § 1391(b).

10. This Court has authority to grant declaratory and injunctive relief under Federal Rules of Civil Procedure 57 and 65 and 28 U.S.C. §§ 2201 and 2202.

PARTIES

11. Plaintiffs are citizens of the United States and are registered to vote in Alabama.

12. Plaintiff Marcus Caster is a Black Citizen of the United States and of the state of Alabama, a registered voter, and a resident of Washington County in the First Congressional District ("CD 1"). CD 1 is a majority-white district in which Black voters like Mr. Caster do not have an opportunity to elect their preferred candidates. An additional majority-Black district could be drawn incorporating all or some of Washington County, including Mr. Caster's residence.

13. Plaintiff LaKeisha Chestnut is a Black citizen of the United States and of the state of Alabama, a registered voter, and a resident of Mobile County in CD 1 in the enacted plan. CD 1 is a majority-white district in which Black voters like Ms. Chestnut do not have an opportunity to elect their preferred candidates. An

additional majority-Black district could be drawn incorporating all or some of Mobile County, including Ms. Chestnut's residence.

14. Plaintiff Bobby DuBose is a Black citizen of the United States and of the state of Alabama, a registered voter, and a resident of Jefferson County in CD 7 in the enacted plan, in which Black voters like Mr. DuBose are packed, preventing the creation of an additional majority-Black district as required by the Voting Rights Act.

15. Plaintiff Benjamin Jones is a Black Citizen of the United States and of the state of Alabama, a registered voter, and a resident of Montgomery County in the Second Congressional District ("CD 2"). CD 2 is a majority-white district in which Black voters like Mr. Jones do not have an opportunity to elect their preferred candidates. An additional majority-Black district could be drawn incorporating all or some of Montgomery County, including Mr. Jones's residence.

16. Plaintiff Rodney Love is a Black citizen of the United States and of the state of Alabama, a registered voter, and a resident of Jefferson County in CD 7 in the enacted plan, in which Black voters like Mr. Love are packed, preventing the creation of an additional majority-Black district as required by the Voting Rights Act.

17. Plaintiff Manasseh Powell is a Black citizen of the United States and of the state of Alabama, a registered voter, and a resident of Montgomery County in CD 2. CD 2 is a majority-white district in which Black voters like Mr. Powell do not have an opportunity to

elect their preferred candidates. An additional majority-Black district could be drawn incorporating all or some of Montgomery County, including Mr. Powell's residence.

18. Plaintiff Ronald Smith is a Black citizen of the United States and of the state of Alabama, a registered voter, and a resident of Bullock County in CD 2. CD 2 is a majority-white district in which Black voters like Mr. Smith do not have an opportunity to elect their preferred candidates. An additional majority-Black district could be drawn incorporating all or some of Bullock County, including Mr. Smith's residence.

19. Plaintiff Wendell Thomas is a Black citizen of the United States and of the state of Alabama, a registered voter, and a resident of Montgomery County in CD 2 in the enacted plan. CD 2 is a majority-white district in which Black voters like Mr. Thomas do not have an opportunity to elect their preferred candidates. An additional majority-Black district could be drawn incorporating all or some of Montgomery County, including Mr. Thomas's residence.

20. Defendant John H. Merrill is sued in his official capacity as the Secretary of State of Alabama. The Secretary of State is Alabama's chief election officer. Ala. Code § 17-1-3(a). In that capacity, he is responsible for providing uniform guidance for election activities and implementing the state's election laws and regulations, including HB 1. *Id.*

LEGAL BACKGROUND

21. Section 2 of the Voting Rights Act, 52 U.S.C. § 10301(a), prohibits any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color[.]” Thus, in addition to prohibiting practices that deny outright the exercise of the right to vote, Section 2 prohibits vote dilution. A violation of Section 2 is established if it is shown that “the political processes leading to nomination or election” in the jurisdiction “are not equally open to participation by [majority-Black voters] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 52 U.S.C. § 10301(b).

22. The dilution of voting strength “may be caused by the dispersal of [members of a racial or ethnic group] into districts in which they constitute an ineffective minority of voters or from the concentration of [members of that group] into districts where they constitute an excessive majority.” *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986).

23. In *Thornburg v. Gingles*, the United States Supreme Court identified three necessary preconditions (the “*Gingles* preconditions”) for a claim of vote dilution under Section 2 of the Voting Rights Act: (1) the minority group must be “sufficiently large and geographically compact to constitute a majority in a single-member district”; (2) the minority group must be “politically cohesive”; and (3) the majority must vote

“sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” 478 U.S. at 50-51.

24. Once all three preconditions are established, the statute directs courts to consider whether, under the totality of the circumstances, members of a racial group have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. 52 U.S.C. § 10301(b). The Senate Report on the 1982 amendments to the Voting Rights Act identifies several non-exclusive factors that courts should consider when determining if, under the totality of the circumstances in a jurisdiction, the operation of the electoral device being challenged results in a violation of Section 2.

25. These Senate factors include: (1) the history of official voting-related discrimination in the state or political subdivision; (2) the extent to which voting in the elections of the state or political subdivision is racially polarized; (3) the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, and prohibitions against bullet-voting; (4) the exclusion of members of the minority group from candidate slating processes; (5) the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; (6) the use of overt or subtle racial appeals in political campaigns; and (7) the extent to

which members of the minority group have been elected to public office in the jurisdiction.

26. The Senate Report itself and the cases interpreting it have made clear that “there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.” *United States v. Marengo Cnty. Comm’n*, 731 F.2d 1546, 1566 n.33 (11th Cir. 1984) (quoting S. Rep. No. 97417, at 29 (1982)); *see also id.* at 1566 (“The statute explicitly calls for a ‘totality-of-the circumstances’ approach and the Senate Report indicates that no particular factor is an indispensable element of a dilution claim.”).

FACTUAL ALLEGATIONS

A. Alabama’s 2021 Redistricting Process

27. The enacted plan is the product of a muddled and harried process, which left legislators little time to meaningfully consider alternative proposals and necessary redistricting criteria.

28. On October 26, 2021, two days before the Legislature took up redistricting in a special session, the Alabama Legislative Committee on Reapportionment held a hearing to approve plan proposals to be presented to the full Legislature. Committee members, however, were not sent the proposed plans until the night before the hearing, forcing them to vote and debate maps they had almost no time to consider.

29. It quickly became apparent that no committee member understood why the maps were drawn the

way they were. The chair of the committee explained that the proposed maps were drawn not by, or in coordination with, committee members but rather were the product of committee staff and the committee's attorney. It was also revealed that the proposed maps were not subjected to functional or racial polarization analyses, tests critical to determining whether a plan complies with Section 2 of the Voting Rights Act.

30. Many committee members found these substantive and procedural flaws fatal to the committee's work and implored the chair to postpone approval of the maps until members could meaningfully consider the proposals and to allow time to determine whether the maps complied with the Constitution and the Voting Rights Act. Members were emphatic that to do otherwise would make a mockery of the committee's work and leave them unable to intelligently explain the advantages or disadvantages of the ultimately approved proposals to the full legislature.

31. These objections were overruled or voted down along party lines by the Republican-led committee. In the end, each proposal, including the congressional plan that formed the basis of the enacted map, were approved only by Republican committee members who had fewer than 24 hours to consider the proposals for which they voted.

32. The Legislature's special session was no less perfunctory. The Legislature began formally considering map proposals on October 28, 2021. By November 1, 2021, the congressional map had passed the House.

And by, November 3, 2021, it was approved by the senate. Throughout the session, Democratic legislators criticized the law’s passage as irreparably flawed, leaving legislators little time to consider the map and in the dark as to the data and process that led to the map’s drawing. Moreover, many legislators lamented the enacted map’s failure to create a second majority-Black district and emphasized the state’s continued practice of stymying Black representation within the state.

33. Governor Kay Ivey signed HB 1 into law on November 4, 2021.

B. The 2021 Congressional Redistricting Plan

34. The enacted congressional plan contains only a single majority-Black district—CD 7—despite Black Alabamians composing over 27 percent of the state’s population. CD 7 is heavily Black and includes nearly 30% of Alabama’s Black population.¹

35. Enacted CD 7 includes Jefferson, Tuscaloosa, Pickens, Greene, Sumter, Hale, Perry, Dallas, Montgomery, Lowndes, Wilcox, Marengo, Choctaw, and Clarke Counties.

¹ For purposes of this Complaint, “Black” represents any person who selected “Black or African Am.” on the Census form, regardless of whether they also selected another race, and regardless of whether they indicated they were of “Hispanic, Latino, or Spanish origin.”

36. HB 1 “cracks” Black voters in surrounding districts CDs 1, 2, and 3 and “packs” Black voters into CD 7, preventing the emergence of a second congressional district in which Black voters would have an opportunity to elect their candidates of choice.

37. This is all despite the state’s rising Black population. Between 2010 and 2020, Alabama’s population increased from 4,779,736 to 5,024,279, a 5.1 percent increase. Thirty-four percent of that population increase is attributable to Black residents.

38. By combining cracked Black populations in CDs 1, 2, and 3 and unpacking CD 7, the Alabama mapdrawers could have drawn two majority-Black districts, as required by Section 2 of the Voting Rights Act.

39. Each of the three districts among which the Black population is significantly cracked—CDs 1, 2, and 3—includes at least one significant Black population center in an otherwise overwhelmingly white district. For example, CD 3 contains Macon County, which is home to the historically Black college Tuskegee University and has a Black population of 80.4 percent. Similarly, CD 1 includes Mobile County, which has a Black population of 36.2 percent, and Monroe County, which has a Black population of 41.0 percent. Montgomery County, which has a Black population of 59.3 percent is split between CDs 2 and 7. The Black population in the eastern portion of Alabama is split in two by the border between CDs 2 and 3.

40. HB 1’s cracking of the state’s Black population is exemplified by the splitting of the state’s

historical Black Belt. Located in the south-central region' of Alabama, the Black Belt was originally named for its rich black soil, but over time came to be associated with the slave labor that soil attracted. Today the Black Belt region refers to the state's counties with the largest Black populations. As Booker T. Washington explained in 1901, the Black Belt was "the part of the South where the slaves were most profitable, and consequently they were taken there in the largest numbers."

41. According to the Center for Business and Economic Research at the University of Alabama, the "traditional counties" of the Alabama Black Belt include Sumter, Choctaw, Greene, Hale, Marengo, Perry, Dallas, Wilcox, Lowndes, Butler, Crenshaw, Montgomery, Macon, Bullock, Pike, Barbour, and Russell Counties. The counties that surround the Black Belt, such as Washington, Mobile, Clarke, Escambia, and Monroe Counties, are also known for their large Black populations.

42. In HB 1, the Black Belt and its surrounding counties are split among four congressional districts—CDs, 1, 2, 3, and 7.

43. Rather than crack and pack Black voters in these districts, a second majority-Black district could have been drawn in CD 2 in any number of configurations. As just one example, CD 2 could be drawn to include all of Montgomery County and to encompass Black Belt counties in the western part of the state, ceding the state's southernmost counties to CD 1. This

configuration would have resulted in two majority-Black districts, CDs 2 and 7, while adhering to each of the state's redistricting criteria.

44. Indeed, the Legislature could have reached this result by any number of variations on a similar configuration, suggesting that rather than embrace a natural second majority-Black district, the Legislature worked to avoid one.

C. Racial Polarization in Alabama

45. Voting in Alabama is racially polarized. Black voters in Alabama are politically cohesive and overwhelmingly support Democratic candidates. The white majority in Alabama is also politically cohesive, overwhelmingly supports Republican candidates, and historically votes as a bloc to defeat Black voters' candidates of choice.

46. The last time voters in CD 1 elected a Black candidate to represent them in Congress, for example, was during Reconstruction. Indeed, while about a quarter of the voting age population in CD 1 is Black, white Republicans have been continuously elected to represent CD 1 since 1965.

47. In 2020, exit polling showed that 89 percent of Black voters in Alabama supported President Biden in the presidential election while 77 percent of white Alabamians voted for former President Trump.

48. Federal courts have consistently found that voting in Alabama is and remains severely racially

polarized. In *Buskey v. Oliver*, for example, the U.S. District Court for the Middle District of Alabama concluded that the City of Montgomery, which is the county seat of Montgomery County in the Black Belt, is “a city still polarized by race, with only white council members being elected from predominantly white council districts and with only black council members being elected from predominantly black council districts.” 565 F. Supp. 1473, 1482 (M.D. Ala. 1983).

49. In *United States v. Dallas County Commission*, 739 F.2d 1529, 1536 (11th Cir. 1984), the Eleventh Circuit found that racially polarized voting existed in Dallas County elections for the period from 1966 through 1978. On remand, the U.S. District Court for the Southern District of Alabama determined that voting patterns in Dallas County remained polarized along racial lines between 1978 and 1986. *United States v. Dallas Cty. Comm’n*, 636 F. Supp. 704, 710 (S.D. Ala. 1986).

50. And in 2011, the Middle District of Alabama recognized “[i]n an era when the degree of racially polarized voting in the South is increasing, not decreasing, Alabama remains vulnerable to politicians setting an agenda that exploits racial differences.” *United States v. McGregor*, 824 F. Supp. 2d 1339, 1347 (M.D. Ala. 2011) (internal quotation marks omitted); *see also Dillard v. Baldwin Cnty. Comm’n*, 222 F. Supp. 2d 1283, 1290 (M.D. Ala. 2002) (“[B]lack citizens of Baldwin County still suffer from . . . racially polarized voting and from historically depressed conditions,

economically and socially.”) *aff’d*, 376 F.3d 1260 (11th Cir. 2004).

51. The cause of the state’s racial polarization can be found in its long history of racial discrimination: “Racial bloc voting by whites is attributable in part to past discrimination, and the past history of segregation and discrimination affects the choices of voters at the polls.” *Brown v. Bd. of Sch. Comm’rs of Mobile Cnty.*, 542 F. Supp. 1078, 1094 (S.D. Ala. 1982), *aff’d*, 706 F.2d 1103 (11th Cir. 1983), *aff’d* 464 U.S. 1005 (1983).

D. Alabama’s History of Racial Discrimination

52. In a region infamous for its racial discrimination, Alabama stands out. After nearly a century of formal disenfranchisement, Reconstruction granted Black Alabamians the right to vote. Almost immediately afterward, however, Alabama embarked on what would become a centuries-long program to ensure Black citizens could never exercise that right. At first manifesting in literacy tests and poll taxes, Alabama’s effort to discriminate against Black voters morphed over time into white primaries, and eventually into the vote dilution reflected in the map at issue in this litigation.

53. Consider first Alabama’s 1901 constitutional convention. The state ratified voter restrictions such as literacy tests, employment and property requirements,

and a cumulative poll tax, which formed a legal blockade against the Black vote.

54. The state's intentions were obvious. The President of the constitutional convention, John B. Knox, explained that the purpose of the convention was "to establish white supremacy in this State," asserting that within

the white man [is] an inherited capacity for government, which is wholly wanting in the Negro. Before the art of reading and writing was known, the ancestors of the Anglo-Saxon had established an orderly system of government . . . the Negro on the other hand, is descended from a race lowest in intelligence and moral perceptions of the races of men.

55. Delegates to the convention both understood and desired that these laws would restrict the Black vote. It was the judgment of one delegate that "th[e] poll tax qualification is the most important provision" in the proposed constitution because "in the Black Belt and . . . in many counties in the state, there is a large percentage of those young Negroes who are coming of age that will be able to read and write, [and] therefore will be qualified under the provisions of this article" to vote. "The only safety valve," he continued, "that is contained in this article, after 1903 for a large proportion of the Negroes in this State is this Poll tax of \$1.50." *United States v. Alabama*, 252 F. Supp. 95, 99 (M.D. Ala. 1966). Alabama "want[ed] that poll tax to pile up so high that [Black voters] will never be able to vote

again.” *Id.* The State’s poll tax would exist until 1966, when a federal court finally struck it down. *Id.*

56. At the same time that Alabama actively worked to disenfranchise Black voters, it strove to protect the enfranchisement of white voters. For example, to avoid unintentionally suppressing white voters, the 1901 constitution provided “grandfather clauses” that exempted voters from the constitution’s voter suppression provisions if they could show, for example, a vague level of “understanding” of the U.S. Constitution or that they were veterans or descendants of veterans, requirements very few Black Alabamians at the time could meet.

57. The effect of the 1901 constitution on the Black vote was staggering. In 1900 there were approximately 181,000 registered Black male voters in Alabama. By 1903, there were 3,000.

58. For Alabama, even 3,000 Black voters were still too many. The state’s voter suppression laws brought about one-party rule in Alabama, shifting the importance of the general election to the primary. Realizing that excluding Black voters from primary contests would effectively eliminate the chance for Black voters to influence the outcome of any election, Alabama legislators seized the opportunity by inventing the all-white primary system. Alabama expressly excluded Black voters from participating in primary elections, cutting off Black Alabamians from any hope of political power.

59. Alabama fiercely defended its right to disenfranchise its Black citizens in the face of federal interference. Fearing that the United States Senate would pass a law eliminating the state's poll tax, the Alabama Legislature in 1942 congratulated its U.S. Senators on "their magnificent fight against the measure now pending in Congress which is calculated to destroy our Poll Tax Law." *Id.* at 102.

60. Legal upsets, however, only emboldened Alabama. After the Supreme Court found the use of white-only primaries unconstitutional in *Smith v. Allwright*, 321 U.S. 649 (1944), Alabama ratified a new constitutional amendment that would require new voting registrants to "understand and explain," and read and write, an article of the U.S. Constitution. Like its predecessors, this voting measure was motivated by racial discrimination. One drafter of the amendment explained that the "understanding" clause would give "discretion to the Board of Registrars and enable them to prevent from registering those elements in our community which have not yet fitted themselves for self-government."

61. A court ultimately concluded that the "understanding" clause was unlawful, but Alabama quickly replaced it with a questionnaire that took advantage of the state's racial disparity in education to bar Black voters from the polls. One academic explained that even an "honestly designed educational test" would "bar the ballot to the great mass of uneducated Negroes."

62. The state's effort to disenfranchise Black voters extended to its electoral devices. For example, Alabama embraced at-large elections whenever it perceived a threat of meaningful Black voter participation to dilute the Black vote. Alabama also passed a bill eliminating "single-shot" voting, which had previously enabled "a minority group to win some at-large seats if it concentrates its vote behind a limited number of candidates and if the vote of the majority is divided among a number of candidates." *City of Rome v. United States*, 446 U.S. 156, 184 n.19 (1980), *abrogated by Shelby Cnty. v. Holder*, 570 U.S. 529 (2013).

63. Further, in a primitive form of gerrymandering that would portend the more sophisticated line drawing to come, the city of Tuskegee redrew its city limits in 1957 to oust Black residents and eliminate their ability to influence city council elections. This flagrantly discriminatory gerrymander would be declared unconstitutional by the Supreme Court three years later in *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

64. This period in the state's centuries-long effort to disenfranchise Black voters culminated in 1965 on "Bloody Sunday." On March 7, 1965, nonviolent activists began a march from Selma to Montgomery to protest Alabama's voter suppression laws and practices. As the marchers crossed the Edmund Pettus Bridge, Dallas County Sheriff Jim Clark directed state troopers to attack the unarmed activists with billy clubs and tear gas. The country and world watched in horror.

65. Bloody Sunday and the public outcry it produced motivated Congress to pass the landmark Voting Rights Act in August 1965. Because of the state's history of adopting and enforcing unconstitutional devices designed to disenfranchise Black voters, Alabama was deemed a "covered" state under the Voting Rights Act, requiring Alabama to submit changes to its electoral practices or procedures to the U.S. Department of Justice or to a Federal District Court for approval.

66. The Voting Rights Act was not the cure-all the country had hoped for: Alabama has remained incorrigibly committed to voter suppression.

67. From the Act's passage in 1965 to 1982, when the Voting Rights Act was reauthorized, the Department of Justice was forced to send election observers to Alabama a staggering 107 times to prevent Alabama from restricting Black voters from accessing the polls. Between 1982 and 2006, the Department sent observers to the state another 91 times. In 1992, for example, the Department sent officials to Greensboro, Alabama after white election officials—incensed by the election of the first Black officials to local office—sought to prevent Black voters from entering polling places. All told, between 1965 and 2013 the Department blocked at least 100 of Alabama's proposed voting changes under the Voting Rights Act's preclearance process. *See* U.S. Dep't of Justice, Civil Rights Division, Voting Section, Voting Determination Letters for Alabama, <http://www.justice.gov/crt/records/vot/obiletters/stateletters.php?state=a1> (last updated May 18, 2020) (listing all

objections imposed against Alabama under Section 5 of the Voting Rights Act)

68. Over the nearly six decades since the Voting Rights Act was passed, Alabama has been sued dozens of times over its racially discriminatory voting practices. *See, e.g., People First of Ala. v. Merrill*, 467 F. Supp. 3d 1179 (N.D. Ala. 2020) (witness requirement for absentee ballots); *Greater Birmingham Ministries v. Alabama*, 161 F. Supp. 3d 1104 (N.D. Ala. 2016) (photo identification law); *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254 (2015) (racial gerrymandering); *S. Christian Leadership Conf of Ala. v. Sessions*, 56 F.3d 1281 (11th Cir. 1995) (at-large system for electing trial judges); *City of Pleasant Grove v. United States*, 479 U.S. 462 (1987) (selective annexations); *Hunter v. Underwood*, 471 U.S. 222 (1985) (felon disenfranchisement); *Harris v. Graddick (Harris I)*, 593 F. Supp. 128 (M.D. Ala. 1984) (appointment of disproportionately few Black poll officials); *United States v. Alabama*, 252 F. Supp. 95 (M.D. Ala. 1966) (discriminatory administration of the poll tax); *United States v. Logue*, 344 F.2d 290 (5th Cir. 1965) (racial discrimination in voter registration); *Sims v. Baggett*, 247 F. Supp. 96 (M.D. Ala. 1965) (racial gerrymandering); *United States v. Atkins*, 323 F.2d 733 (5th Cir. 1963) (racial discrimination in voter registration).

69. The Supreme Court's invalidation of Section 4 of the Voting Rights Act in *Shelby County v. Holder*, 570 U.S. 529 (2013), left the state unchecked to continue its legacy of racially discriminatory practices. The day after *Shelby County* was decided, Alabama

announced that it would pursue a strict voter ID law. Alabama then proceeded to close 31 offices providing driver's license services to make it more difficult for voters to obtain the necessary photo ID to satisfy the state's new law. An investigation by the Federal Department of Transportation concluded that "African Americans residing in the Black Belt region of Alabama were disproportionately underserved by [the state's] driver licensing services, causing a disparate and adverse impact on the basis of race."

70. What is briefly described here as Alabama's history of voter discrimination cannot possibly capture the state's centuries-long efforts to maintain white supremacy within its borders. Nevertheless, several federal courts, including the U.S. Supreme Court, have acknowledged the state's history in official opinions which provide additional context. *See, e.g., McGregor*, 824 F. Supp. 2d at 1346 ("The intersection of political strategy and purposeful racial prejudice is nothing new. Alabama has a lengthy and infamous history of racial discrimination in voting."); *Hunter*, 471 U.S. at 229 ("[T]he Alabama Constitutional Convention of 1901 was part of a movement that swept the post-Reconstruction South to disenfranchise blacks. . . . The delegates to the all-white convention were not secretive about their purpose."); *Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1360 (M.D. Ala. 1986) ("As the late Judge Richard T. Rives stated, 'from the Constitutional Convention of 1901 to the present, the State of Alabama has consistently devoted its official resources to maintaining white supremacy and a segregated

society.’”) (quoting *United. States v. Alabama*, 252 F. Supp. at 101).

E. Alabama’s History of Unlawful Redistricting

71. Alabama’s practice of voter suppression has extended to its modern redistricting efforts. During the 1980 redistricting cycle, the Department of Justice rejected Alabama’s proposed legislative redistricting plan because it reduced the number of majority-Black districts within the state. And it objected again to Alabama’s revised map because it intentionally “cracked” Black voters in Black Belt counties.

72. The Department also intervened in Alabama’s 1992 redistricting plan for appearing once again to “crack” majority-Black voting populations to dilute Black voting power.

73. During the 2010 redistricting cycle, Alabama packed the state’s existing majority-Black legislative districts with many more Black voters. Of the 15,785 individuals added to Senate District 26, for example, only 36 were white. *Ala. Legis. Black Caucus*, 575 U.S. at 260.

74. The state’s “packing” of Black Alabamians in House and Senate districts drew a lawsuit from the Alabama Legislative Black Caucus and the Alabama Democratic Conference, who argued that Alabama’s state legislative redistricting plans were racial gerrymanders that diluted the Black vote. After being

reversed by the U.S. Supreme Court, the United States District Court for the Middle District of Alabama agreed with the plaintiffs, concluding that several state House and Senate districts were unconstitutionally drawn on the basis of race. *Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026 (M.D. Ala. 2017).

F. Ongoing Effects of Alabama's History of Discrimination

75. Black Alabamians lag behind their white counterparts on nearly every measure, including in areas such as education, employment, income, and access to health care. For example, according to the most recent five-year American Community Survey, between 2015 and 2019, 27 percent of Black Alabamians were living below the poverty line, more than twice the number of impoverished white Alabamians during the same period. And according to one report, white Alabamians lead their Black counterparts in bachelor's degrees by double-digits. Indeed, education outcomes for Black Alabamians are particularly dire. As of 2014, 43 school districts in Alabama were under some form of federal oversight as a result of continued segregation, despite the Supreme Court's *Brown v. Board of Education* decision 60 years ago.

76. Black Alabamians also lag behind economically. Black incomes are substantially lower than those paid to their white counterparts, and Black Alabamians are unemployed within the state at much higher

rates, too. Similar disparities exist in the areas of housing, home ownership, and access to a vehicle.

77. Low-income voters face a number of hurdles to voter participation including working multiple jobs, working during polling place hours, lack of access to childcare, lack of access to transportation, and higher rates of illness and disability. All of these hurdles make it more difficult for poor and low-income voters to participate effectively in the political process.

G. History of Racial Appeals in Political Campaigns

78. Political campaigns in Alabama have long relied on explicit and implicit racial appeals to stir voters.

79. At the height of Jim Crow, Governor George Wallace famously ran on a platform of “segregation now, segregation tomorrow, segregation forever.” Sadly, such sentiments were not confined to that era.

80. In 2010, some Alabama state senators were recorded strategizing about suppressing Black voter turnout by keeping an issue important to Black Alabamians—whether to legalize electronic bingo—off the ballot. In these conversations, then-state Senator Scott Beason, then-state Representative Benjamin Lewis (now an appointed county judge), and other influential members of the Alabama legislature are heard targeting Black voters for “mockery and racist abuse.” *McGregor*, 824 F. Supp. 2d at 1346. They referred to

Blacks as “Aborigines” and “Indians” and predicted that if the ballot measure appeared on the ballot “every black in this state will be bused to the polls . . . [e]very black, every illiterate would be bused on HUD financed buses.” *Id.* at 1345 (citation and internal quotation marks omitted). A federal district court found that the state senators’ efforts to depress Black voter turnout constituted an intentionally discriminatory “scheme” to “maintain and strengthen white control of the political system,” and that “political exclusion through racism remains a real and enduring problem in this State.” *Id.* at 1347.

81. Still more, at a November 2015 rally for then-candidate Donald Trump in Birmingham, a peaceful Black Lives Matter protester was punched and kicked by a group of men yelling, “Go home nigger,” after the protester interrupted Trump’s speech by shouting “Black Lives Matter!” The next day, referring to the beaten Black Lives Matter protester, then-candidate Trump stated, “Maybe he should have been roughed up, because it was absolutely disgusting what he was doing.”

82. More recently, Roy Moore, who ran for U.S. Senate in 2017, stated at a revival in Jackson, Alabama, “They started [to] create new rights in 1965, and today we’ve got a problem,” an apparent reference to the Voting Rights Act. When asked to speak about the last time America was great, Moore stated, “I think it was great at the time when families were united—even though we had slavery—they cared for one another. . . . Our families were strong, our country had a direction.”

H. Extent to Which Black Alabamians Have Been Elected to Public Office

83. As a consequence of Alabama's past history of voter suppression and racial discrimination, Black Alabamians have struggled to be elected to public office in the state.

84. From Reconstruction until 1992, Alabama failed to elect a single Black representative to Congress. Although today 27.2 percent of Alabama's population is Black, not one statewide elected office is currently held by a Black Alabamian. And Alabama has never had a Black governor or U.S. senator.

85. It took the creation of the state's first majority-Black district through litigation—CD 7—before a Black Alabamian could win election to federal office. The citizens of CD 7 have elected a Black representative in every election since 1992, and today CD 7 is represented by Congresswoman Terri Sewell, who first won the seat in 2010.

86. But Black voters in Alabama have been limited to a single Black member of Congress for thirty years. And because of the state's racially polarized voting, it is unlikely to elect another Black candidate to Congress absent the creation of a second majority-Black district.

87. Black Alabamians have fared no better in statewide elections. Not a single statewide office in the state is held by a Black official—indeed, a Black official has not held a statewide office in the past 21 years. And

no Black Alabamian has held a non-judicial statewide office. Even the only two Black candidates ever to have won a statewide judicial election have done so only after first being appointed by the Governor.

88. Finally, although the state's Legislature has several Black members, the lion's share of these legislators won their seats only after court-ordered redistricting plans created new majority-Black districts. Without majority-Black districts, Black candidates are highly unlikely to retain these seats, let alone win new ones, due to the white majority's voting as a bloc to prevent Black voters from electing candidates of their choice.

CLAIMS FOR RELIEF

COUNT I

Violation of Section 2 of the Voting Rights Act Vote Dilution

89. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the count below as though fully set forth herein.

90. Section 2 of the Voting Rights Act prohibits the enforcement of any voting qualification or prerequisite to voting or any standard, practice, or procedure that results in the denial or abridgement of the right of any U.S. citizen to vote on account of race, color, or membership in a language majority-Black group. 52 U.S.C. § 10301(a).

91. The district boundaries created by HB 1 combine to “crack” and “pack” Black Alabamians, resulting in the dilution of their electoral strength in violation of Section 2 of the Voting Rights Act.

92. Black Alabamians are sufficiently numerous and geographically compact to constitute a majority of eligible voters in two congressional districts.

93. Black voters in CDs 1, 2, 3, and 7 are politically cohesive, and elections in the state reveal a clear pattern of racially polarized voting that allows blocs of white voters usually to defeat Black-preferred candidates.

94. The totality of the circumstances establishes that the enacted congressional plan has the effect of denying Black voters an equal opportunity to participate in the political process and to elect candidates of their choice, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

95. In enforcing the district boundaries in HB 1, Defendant has acted and, absent relief from this Court, will act to deny Plaintiffs’ rights guaranteed to them by Section 2 of the Voting Rights Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that HB 1 violates Section 2 of the Voting Rights Act;

- B. Enjoin Defendant, as well as his agents and successors in office, from enforcing or giving any effect to the boundaries of the congressional districts as drawn in HB 1, including an injunction barring Defendant from conducting any further congressional elections under the current map;
- C. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to order the adoption of a valid congressional plan that includes a second majority-Black congressional district in Alabama;
- D. Grant such other or further relief the Court deems appropriate, including but not limited to an award of Plaintiffs' attorneys' fees and reasonable costs.

Dated: November 4, 2021 Respectfully submitted,

By /s/ Richard P. Rouco

Richard P. Rouco
(AL Bar. No. 6182-R76R)
**Quinn, Connor, Weaver,
Davies & Rouco LLP**
Two North Twentieth
2-20th Street North,
Suite 930
Birmingham, AL 35203
Phone: (205) 870-9989
Fax: (205) 803-4143
Email:
rrouco@qcwdr.com

Aria C. Branch*
Lalitha D. Madduri*
Joseph N. Posimato*
Olivia N. Sedwick*
Elias Law Group LLP
10 G St. NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4518
ABranch@elias.law
LMadduri@elias.law
JPosimato@eliaslaw
OSedwick@elias.law

JA343

Abha Khanna*
Elias Law Group LLP
1700 Seventh Ave,
Suite 2100
Seattle, WA 98101
Phone: (206) 656-0177
AKhanna@elias.law

Attorneys for Plaintiffs

**Motion for Pro Hac*

Vice Forthcoming

JA344

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MARCUS CASTER, et al.,

Plaintiffs,

v.

JOHN H. MERRILL, in
his official capacity as
Alabama Secretary
of State,

Defendant.

Case No.: 2:21-cv-1536-AMM

**JOINT STIPULATED FACTS FOR
PRELIMINARY INJUNCTION PROCEEDINGS**

(Filed Dec. 7, 2021)

Pursuant to this Court's Scheduling Order for Preliminary Injunction Proceedings dated November 23, 2021 (ECF No. 40), the parties submit the following joint stipulated facts:¹

* * *

The Black Belt

33. The Black Belt is named for the region's fertile black soil. The region has a substantial Black

¹ When stipulating to facts as true, the parties do not waive the right to object to evidence as irrelevant or otherwise inadmissible. Any stipulation made for purposes of the upcoming preliminary injunction proceedings shall not bind the parties for other purposes of this litigation.

population because of the many enslaved people brought there to work in the antebellum period. All the counties in the Black Belt are majority- or near majority-BVAP.

34. The Black Belt includes the core counties of Barbour, Bullock, Butler, Choctaw, Crenshaw, Dallas, Greene, Hale, Lowndes, Macon, Marengo, Montgomery, Perry, Pickens, Pike, Russell, Sumter, and Wilcox. Clarke, Conecuh, Escambia, Monroe, and Washington counties are sometimes included within the definition of the Black Belt.

Pre-2011 Congressional District Plans

35. In early 1992, Alabama consented in litigation to create its first majority-Black congressional district, CD 7. *Wesch v. Hunt*, 785 F. Supp. 1491 (S.D. Ala. 1992).

36. Following the 2000 Census, Alabama enacted a new seven-district congressional plan (the “2001 Plan”) in which CD 7 remained the only majority-minority district.

37. After the establishment of CD 7 as a majority-Black district in the 1992 Plan, Earl Hillard became the first Black Alabamian to be elected to Congress in the Twentieth Century.

38. In the general congressional elections of 2002, 2004, 2006, and 2008, Artur Davis, a Black Democrat, was elected in CD 7 after winning a majority of Black voters.

39. In each of the general congressional elections of 2002, 2004, 2006, and 2008, Representative Davis won election with no less than 74.9% of the vote.

40. In the November 2010 general congressional election, Terri Sewell, a Black Democrat, was elected in CD 7 after winning a majority of Black voters.

41. In the November 2010 general congressional election, Representative Sewell won election in CD 7 with 72% of the vote, beating her white opponent by 45 points.

42. In the Twentieth century, Black Alabamians have never elected a Black person to Congress outside of the majority-Black CD 7, and only since 1992.

43. In congressional races in the current majority-white CDs 1, 2, and 3, Black candidates have never won election to Congress.

44. In 2010, CD 7 under the 2001 Plan had a Black voting-age population (“BVAP”) of 60.11%.

2011 Congressional District Plan (“the 2011 Plan”)

45. In 2011, Alabama enacted a seven-district congressional plan with one majority-minority district, CD 7.

46. The 2011 Plan increased the BVAP of CD 7 from 60.11% to 60.91% AP Black and 60.55% SR Black, according to 2010 Census data.

47. In the 2012 general congressional election—the first held under the 2011 Plan—Representative Sewell won 75% of the vote in a contested race, beating her opponent by 51 points.

48. In each election since 2012, Representative Sewell has run unopposed in the general election.

* * *

The 2021 Plan

92. The enacted congressional plan contains only one majority-minority district—CD 7.

93. According to 2020 Census data, CD 7 in the 2021 Plan has a BVAP of 55.26% AP Black and 54.22% SR Black.

94. Under the 2021 Plan, CDs 1, 2, 4, and 6 border CD 7.

State Board of Education (“SBOE”) Plans

i. The 2011 SBOE Plan

95. The Alabama SBOE is a nine-member body that sets education policy for Alabama’s K-12 schools. The Governor serves as the president of the SBOE, and the remaining eight members are elected to the Board from single-member districts.

96. In 2011, Alabama adopted an eight-district SBOE Plan (the “2011 SBOE Plan”) with two majority-minority districts, Districts 4 and 5, in central and southern Alabama.

97. According to 2010 Census data, District 4 was 51.4% AP BVAP, and District 5 was 57.5% AP BVAP.

98. District 5 of the SBOE Plan includes the City of Mobile and many of the Black Belt Counties.

99. Based upon the 2020 Census data, Districts 4 and 5 under the 2011 SBOE Plan remain majority AP BVAP. 2011 SBOE District 4 is 51.5% and 2011 SBOE District 5 is 57.7%.

100. In each election since 2011, a Black Democrat won a majority of Black voters and the election in Districts 4 and 5 of the SBOE. District 5 of the SBOE Plan connects the City of Mobile to the Black Belt Counties.

ii. The 2021 SBOE Plan

101. The 2021 SBOE Plan adopted by the Alabama legislature and signed by Gov. Ivey on Nov. 4, 2021, includes two majority Black BOE districts in central and southern Alabama, Districts 4 and 5.

102. District 4 is 51.21% SR BVAP and District 5 is 51.27% SR BVAP.

103. According to the 2020 Census data, the combined SR Black population in the two majority Black districts represent more than half of the statewide Black population.

III. *Gingles* Preconditions

104. In the 2019 *Chestnut v. Merrill*, Case No. 2:18-cv-00907-KOB, litigation, Plaintiffs' mapping expert Mr. Bill Cooper prepared multiple illustrative congressional plans that contained two majority-minority districts in central and southern Alabama.

105. In drawing the Illustrative Plans, Mr. Cooper used the 2011 Plan as his starting point and used the 2011 SBOE Plan as a guide for where in the State a second majority-Black congressional district could be drawn.

106. According to 2010 Census data, each of the 2019 illustrative plans featured CDs 2 and 7 that had voting-age populations that were more than 50% AP Black.

107. According to the 2010 Census data, multiple of the 2019 illustrative plans featured CDs 2 and 7 that had voting-age populations that were more than 50% SR Black.

108. Each of the 2019 illustrative plans split Mobile County between two congressional districts.

109. In 2017, a Democrat was elected to the U.S. Senate (Doug Jones).

110. All but one of the Black representatives in the Alabama Legislature are elected from majority-minority districts.

IV. Totality of the Circumstances

111. After Reconstruction, Alabama lawmakers held a constitutional convention in 1901 with the purpose of enacting a political structure that would maintain white supremacy and prevent Black participation.

112. The 1901 Convention adopted election structures meant to disenfranchise Black Alabamians, including a literacy test, employment requirements, property qualifications, a cumulative poll tax, and disenfranchisement of those convicted of minor crimes.

113. The 1901 Convention created exemptions from their discriminatory devices that sought to limit those devices' disenfranchisement of white voters.

114. A new amendment in 1951 required all voter registration applicants to be able to read and write any article of the U.S. Constitution, among other arbitrary and discretionary things. And in some counties, the board of registrars implemented a "white voucher" rule, which required Black applicants to have a white person vouch for their qualifications to register to vote. And some counties, like Bullock County between 1946 to 1955, wholly refused the voter registration applications of Black Alabamians.

115. In 1964 and 1965, Dallas County Sheriff Jim Clark, Alabama state troopers, and vigilantes violently assaulted peaceful Black protesters attempting to gain access to the franchise.

116. On March 7, 1965, in what became known as Bloody Sunday, state troopers viciously attacked

and brutally beat unarmed peaceful civil rights activists crossing the Edmund Pettus Bridge in Selma, where less than 5 percent of Black voters were registered to vote. Bloody Sunday helped pave the way for the passage of the Voting Rights Act in 1965 and Alabama was declared a “covered” state under Section 4(b) of the Act.

117. Between 1965 and 1982, the Justice Department (“DOJ”) objected 58 times to proposed changes to election practices or procedures in Alabama and sent observers to the State 107 times. Ten of the objections were to preclearance submissions by the State, and 48 were to preclearance submissions by local jurisdictions.

118. Between 1982 and 2006, DOJ objected to preclearance submissions from Alabama 46 times—seven from the State and 39 from local jurisdictions—and sent federal observers to the State 91 times. The most recent objection to a preclearance submission from the State was in 1994.

119. In 1982, DOJ objected to Alabama’s legislative redistricting plans, stating that it was because the plans reduced the number of majority-minority districts and fragmented minority voting strength in a portion of the Black Belt.

120. There is no slating process involved in Alabama’s congressional elections.

121. Alabama has never had more than one African-American congressional representative, and

no African American has been elected to the U.S. House of Representatives outside of CD 7.

122. There are currently no African-American statewide officials in Alabama.

123. Only two African Americans have been elected to statewide office in Alabama, and both ran as incumbents after first being appointed. No Black person has won statewide office in Alabama since 1996.

124. None of the current statewide elected officials are Black. Only two Black people have ever been elected to statewide office. In both instances, the office was associate justice of the Alabama Supreme Court. In 1982 and 1988, the late Justice Oscar W. Adams, Jr. was elected to two consecutive terms; and, in 1994, Justice Ralph D. Cook won an unopposed statewide election. In 2000, both Justice Cook and the then-recently appointed Justice John England, both Black Democrats, lost elections to white Republican candidates.

125. On Tuesday, July 23, a special election was held to fill a vacancy in District 73 of the Alabama House of Representatives. The winner was Kenneth Paschal, the Republican candidate, who received 2,743 votes. Representative Paschal is African American. His white Democratic opponent received 920 votes. District 73 is located in Shelby County, Alabama. Based on 2010 census data, the voting-age population of District 73 was 84.12% white and 9.75% black. (See ALBC doc. 338-1). Representative Paschal defeated a white Republican candidate in the primary election by 64 votes.

JA353

Representative Paschal received 1,476 votes, while his white opponent received 1,412 votes.

126. In 2014, following the Supreme Court's decision in *Shelby County v. Holder*, Alabama's photo identification law went into effect.

JA354

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MARCUS CASTER, et al.,

Plaintiffs,

v.

JOHN H. MERRILL,
in his official capacity
as Alabama Secretary
of State,

Defendant.

Case No.: 2:21-cv-1536-AMM

DECLARATION OF DR. BRIDGETT KING

(Filed Dec. 14, 2021)

Pursuant to 28 U.S.C. § 1746, I, Bridgett King, make the following declaration:

1. My name is Bridgett King, and I reside in Opelika, Alabama. I have been asked by attorneys for the plaintiffs in this litigation to examine the history of race discrimination in voting in Alabama, and the impact that racial discrimination has on the ability of Black voters in Alabama to participate equally in the political process and elect candidates of their choice. The analysis that follows is based on my expertise as a political and social scientist.

JA355

2. I have employed the standard methodology used in my field of expertise in this declaration.¹ My hourly rate of compensation in this case is \$300.00.

Qualifications

3. I am faculty in the department of Political Science at Auburn University. I have been on the faculty since the 2014/2015 academic year and currently hold the rank of Associate Professor with tenure. I additionally serve as the Director of the Master of Public Administration Program. As a member of the Auburn University faculty, I teach undergraduate courses in state policy and governance and graduate courses in policy analysis, public administration and service, and diversity in public administration.

4. I earned my Bachelor's degree in Psychology from Hampton University in 2003; a Master's Degree in Justice Studies from Kent State University in 2006 and Doctor of Philosophy (Ph.D.) in Political Science in 2012 from Kent State University.

5. My doctoral dissertation entitled, "The Effect of State Policy On The Individual Vote Decisions Of African Americans In Presidential And Midterm Elections,

¹ In performing this type of analysis, political and social scientists examine sources such as relevant scholarly studies, newspaper articles on historical events, reports of state or federal governments, and relevant court decisions. We also use secondary data and data sets collected by governments and other reputable research entities to understand political behavior. We use appropriate quantitative methodological approaches to analyze such data, adhering to standard conventions of statistical significance.

1996 To 2008” evaluates the effect of seven state voting policies (registration closing date, photo identification requirements, statewide computer registration database, in person early voting, Election Day registration, no excuse absentee voting, and felony disenfranchisement) on Black turnout in Presidential and midterm elections from 1996 to 2008. I used individual-level data from the US Census Bureau Current Population Survey (“CPS”) that was merged with detailed state level voting policy, demographic, social and economic indicators. Using a series of multilevel models, I analyzed the effect of policy variations on the Black population.

6. Following the completion of my doctorate, I was a voting rights researcher at the Brennan Center for Justice at New York University School of Law. In my role as a voting rights researcher, I was responsible for original research—including empirical research, interviews of public officials and private individuals, collection and analysis of public data, news searches and the supervision of research. Working with other voter rights advocates I developed and coordinated a 2012 Presidential election voter survey that was administered in six states. I also conducted a county level analysis of the quality of voter registration databases across the United States and a preliminary analysis of Election Day voter challenges.

7. My current research focuses on election administration, public policy, citizen voting experiences, and race and ethnicity. Overarching themes in my writings include the administrative structure of felony

disenfranchisement policies and their effect on participation and representation, citizen confidence in electoral outcomes, and the consequences of administrative discretion on voter experiences and democratic representation. I also work on interdisciplinary projects that apply systems and architectural engineering approaches to the field of election administration to address challenges associated with administrative decision-making and voter experiences.

8. I have received external support for my research in election administration from the National Science Foundation, Rockefeller Family Fund, Democracy Fund, and others. I also hold positions in several election administration and research focused projects and initiatives. I am currently on the Electoral Integrity Project International Academic Advisory Board, a track leader with the Election and Voting Information Center (EVIC), and a research partner with the University of Rhode Island Voter Operations and Election Systems (URIVOTES).

9. I am also regularly asked to speak on domestic and international academic and practitioner panels on issues related to election administration and participate in domestic and international election observation efforts.

10. In addition to teaching at Auburn University, I am an instructor in the National Association of Election Officials (Election Center) Certified Elections/Registration Administrator (“CERA”) Program. In the CERA Program I teach courses that have a substantive

focus on communication, voter participation, state constitutions and court cases from early America to 1965, the history of elections from 1781 to the present, and federal interventions in elections and voter registration from the 1960s to the present.

11. I have published 10 journal articles, edited 4 books, and authored 8 book chapters and 3 applied reports. Much of this scholarship focuses on the administration of elections.

12. My research has appeared in the *Election Law Journal*, *Journal of Black Studies*, *Social Science Quarterly*, *Government Information Quarterly*, *Policy Studies*, and the *Journal of Information Technology and Politics*. I have contributed to and edited multiple book manuscripts, including, *Voting Rights in America: Primary Documents in Context*, *The Future of Election Administration*, *The Future of Election Administration: Cases and Conversations*, and *Why Don't Americans Vote? Causes and Consequences*.

Brief Summary of Conclusions

13. This report reviews Alabama's well-documented, pervasive, and sordid history of racial discrimination in the context of voting and political participation. The combination of the continuing effects of this discrimination (as reflected in racial disparities in social and economic indicators such as rates of unemployment, poverty, education, and healthcare), the persistence of severe and ongoing racially polarized voting, and the state's racialized politics significantly and adversely

impact the ability of Black Alabamians to participate equally in the state's political process. The district map challenged in this lawsuit should be viewed in this context.

SENATE FACTORS

14. This report examines the factors established by the U.S. Senate Judiciary Committee in 1982 to guide courts in assessing the totality of circumstances relevant to a Section 2 claim that a challenged law impedes the ability of a minority group to participate equally in the political process.²

15. The Senate Factors are:

- Factor 1: The extent of any history of official discrimination in the state or political subdivision that touched the right of members of the minority group to register, vote, or otherwise to participate in the democratic process;
- Factor 2: The extent to which voting in the elections of the state or political subdivision is racially polarized;³
- Factor 3: The extent to which the state or political subdivision has used unusually large

² See *Thornburg v. Gingles*, 478 U.S. 30, 45 (1986); United States Department of the Justice, *Section 2 of the Voting Rights Act*, (Sept. 14, 2018), <https://www.justice.gov/crt/section-2-voting-rights-act>.

³ My report does not analyze the extent to which voting in Alabama is racially polarized, as I understand another expert retained by Plaintiffs will provide such analysis.

JA360

election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

- Factor 4: If there is a candidate slating process, whether the members of the minority group have been denied access to that process;⁴
- Factor 5: The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
- Factor 6: Whether political campaigns have been characterized by overt or subtle racial appeals; and
- Factor 7: The extent to which members of the minority group have been elected to public office in the jurisdiction.

The Judiciary Committee also noted that the court could consider additional factors such as:

- 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; and

⁴ My report does not address this factor as recent Alabama elections have not utilized slating processes.

- Factor 9: Whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice, or procedure is tenuous.⁵

Senate Factor 1: History of official discrimination in Alabama affecting Black Alabamians' political participation.

16. Limiting Black Americans' ability to fully participate in civic life by enacting discriminatory measures has been an integral part of Alabama politics and culture.

A. Foundational Discrimination Against Black Alabamians

17. Following the Civil War, during the Reconstruction Era, the state actively passed policies with the explicit goal of limiting the ability of newly enfranchised Black Americans to exercise their newfound political rights secured by the 13th, 14th, and 15th Amendments.

18. After the passage of the 13th Amendment by the United States Congress in January 1865, Alabama amended its constitution in September 1865. Article I, Sections 5 and 8 of Alabama's newly amended constitution explicitly stated that only white males could be senators or representatives, and Article VIII, Section 1 stated that only white males were qualified to vote.

⁵ S. Rep. No. 97-417, at 28-29 (1982).

19. After the passage of the 14th Amendment, Alabama again amended its constitution. The 1868 constitution, or “Second Reconstruction Constitution,” which was required for Alabama to be admitted back to the union, removed its race qualification for senators and representatives and the race qualifications for voting.⁶

20. Soon thereafter, however, Democratic party leaders began a program of racial discrimination and voter suppression. When white leaders in Alabama gathered for the state’s 1901 Constitutional Convention, they stated on the record that their express goal was to establish “white supremacy in the State.”⁷ The state’s now infamous voting restrictions were thus born. The 1901 Constitution codified literacy tests and mandated the payment of a \$1.50 cumulative poll tax, both of which were intended to keep Black Alabamians from the polls. As one supporter of these measures stated, Alabama “want[ed] that poll tax to stack up so high that he will never be able to vote again.”⁸ The state’s poll tax survived until 1966.⁹

⁶ Martin, D. (1993). The birth of Jim Crow in Alabama 1865-1896. *National Black Law Journal*, 13(1), 184-197; Bridges, E. C. (2016). *Alabama: The Making of an American State*. Tuscaloosa: University of Alabama Press. 2016.

⁷ Alabama Constitutional Convention (1901). *Journal of the proceedings of the Constitutional convention of the state of Alabama: held in the city of Montgomery, commencing May 21st, 1901*. Montgomery: The Brown printing company.

⁸ *United States v. State of Alabama*, 252 F. Supp. 95, 99 (M.D. Ala. 1966).

⁹ *Id.*

21. Voters were also required to demonstrate the ability to read and write a section of the U.S. Constitution, a requirement that gave broad discretion to election officials to apply the test more strictly against Black applicants.¹⁰ Black applicants were often rejected for “formal, technical, and inconsequential” errors. As an example, Black voters had their registration forms rejected because they did not sign an oath, despite often not being told that they had to sign an oath. By contrast, white applicants were often provided assistance in passing the test.¹¹

22. The 1901 constitution also imposed employment and property requirements on voters, again intended to exclude Black Alabamians from the electorate. Applicants were required to demonstrate one year of employment and the possession of 40 acres of land or property valued at \$300.00 or more. To ensure white voters weren’t accidentally disenfranchised by these provisions, Section 180 of the 1901 constitution included a grandfather clause allowing the registration of any qualifying adult male who was a veteran of a nineteenth century American war or a descendant of a veteran, even if they were unable to meet the other

¹⁰ Cianci Salvatore, S., Foley N., Iverson, P. & Lawson, S. F. (2009). Civil rights in America: Racial voting rights. *National Park Service*. https://www.nps.gov/subjects/tellingallamericans/stories/upload/CivilRights_VotingRights.pdf_H. B. E, & K., Jr., J.J. (1965). Federal Protection of Negro Voting Rights. *Virginia Law Review*, 51(6), 1095.

¹¹ H. B. E, & K., Jr., J.J. (1965). Federal Protection of Negro Voting Rights. *Virginia Law Review*, 51(6), 1094.

voter qualifications required by the state constitution, an exception very few Black Alabamians could meet.

23. The constitution also disqualified voters if they committed minor crimes such as vagrancy and larceny, or vague crimes of moral failing and mental deficiency. This broad, and often standardless, definition of disqualifying crimes provided white officials an additional and highly effective tool to disenfranchise Black voters. Specifically, Article VIII, Section 182 states,

The following persons shall be disqualified both from registering and from voting, namely: All idiots and insane persons; those who shall by reason of conviction of crime be disqualified from voting at the time of the ratification of this Constitution; those who shall be convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude; also, any person who shall be convicted as a vagrant or tramp, or of selling or offering to sell his vote or the vote of another, or of making or offering to make false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any

witness or registrar to secure the registration of any person as an elector.¹²

24. The adoption of the literacy test and poll tax requirements all but eliminated the Black voting population in Alabama. In 1900, there were 180,000 registered Black voters in Alabama. By 1903 there were fewer than 3,000.¹³ In 1906, five years after the adoption of the 1901 Constitution, only two percent of the Black voting age population remained on the voter registration rolls in Alabama.¹⁴

25. The state's program of disenfranchisement was not limited to voting laws. The state also actively worked to reduce the ability of Black Americans to participate in elections and public life. For example, the state adopted the secret ballot, which replaced the use of voice voting and party printed ballots for elections. The secret ballots also served as a de facto literacy test because they prohibited voters from receiving assistance to read and cast the ballot. The Sayre Act (1893) empowered the Alabama Governor to appoint election officials and make changes to the election system, a process that is widely understood to have been designed

¹² The Constitution of Alabama, (1901), *available at* <https://constitutii.files.wordpress.com/2013/02/alabama.pdf>.

¹³ McCrary, P., Gray, J.A., Still, E., Perry, H.L (1994). Alabama. In quiet revolution in the South (Grofman, B. & Davidson, C., Eds), Princeton University Press: Princeton, New Jersey, p. 38-66.

¹⁴ Salvatore, *supra*, n.10.

to prevent the election of Black county commissioners.¹⁵ The Democrats in the State Legislature also gerrymandered Black voters into single districts, eliminated elected positions and replaced them with appointments, and stuffed ballot boxes to ensure political victories.¹⁶

26. Further still, in 1902 the Democratic Party adopted the all-white primary for statewide elections. After the white primary was ruled unconstitutional in *Smith v. Allwright*, 321 U.S. 649 (1944), the state adopted the Boswell Amendment (1946), which required that an applicant for voter registration not only be able to read and write a section of the US Constitution, but also “understand and explain” it.¹⁷ In 1949, the Southern District of Alabama in *Davis v. Schnell*, concluded that the “understand and explain” text violated the 14th and 15th amendments. 81 F.Supp. 872, 878-80 (S.D. Ala. 1949), *aff’d*, 336 U.S. 933 (1949). In that ruling, the court explained that the “Boswell Amendment was purposely used to counteract the Supreme Court’s invalidation of the white primary and

¹⁵ Blacksher J., Still E., Greenbaum, J.M., Quinton, N. Brown, C., & Dumas, R. (2008) Voting rights in Alabama: 1982-2006. *Southern California Review of Law and Social Justice*, 17, 249-281, https://gould.usc.edu/students/journals/rlsj/issues/assets/docs/issue_17/04_Alabama_Macro.pdf.

¹⁶ Warren, S. (2011). Alabama Constitution of 1901. Encyclopedia of Alabama. <http://encyclopediaofalabama.org/article/h-3030>.

¹⁷ H. B. E, *supra*, n.11.

that both its object and the manner of its administration violated the 14th Amendment.”¹⁸

27. And yet the state pressed on with new policies that prevented Black Alabamians from participating in the political process. In 1951 a new constitutional amendment required that voter registration applicants be able to read and write any article of the federal constitution, be of good character, and embrace the duties and obligations of citizenship under the federal and state constitutions. “In order to aid the local board of registrars in determining whether an applicant satisfied these requirements, the applicant was required to answer in writing and without assistance a questionnaire, or application form, prescribed by the Alabama Supreme Court.”¹⁹ From January 1952 to February 1964, the state used a four-page application and form.²⁰ In January 1964 the Alabama Supreme Court modified the form and questionnaire and included questions testing the applicant’s knowledge of government, including the names of government officials, four excerpts from the federal constitution, and a space in which the applicant was to write from dictation several words from the federal constitution. Again, these changes were intended to prevent Black Alabamians from voting.²¹

¹⁸ H. B. E. & K., Jr., *supra* n. 11 at 1092.

¹⁹ *Id.*

²⁰ *Id.* at 1123.

²¹ *Id.* at 1093.

28. The voter registration application also allowed local registrars to demand an affirmation under oath by a supporting witness, who must also be a registered voter, who could attest to knowing the applicant and possessing personal knowledge of the applicant's residence and length of residence in the county and state.²² This affirmation was not required by law and its application was at the sole discretion of the registrars. While some counties did not require a supporting witness, in other counties the witness affirmation requirement was applied only to Black voters.²³

29. In some counties, the Board of Registrars adopted a "white voucher rule" which required voter registration applicants to have a white person vouch for their qualifications, which was meant to prevent Blacks from registering. Where this was in effect, white voter registration applicants were often provided a voucher by the registrars.²⁴

30. Other counties developed novel measures to slow down the process of voter registration among Black citizens. In some counties Black Alabamians were made to wait in excessively long voter registration lines, were instructed to register at a specific time, were not

²² *Id.* at 1097.

²³ "A federal district court in *United States v. Hines* found that in Sumpter County while the requirement has been strictly applied to Negro applicants, its use has been a mere formality for whites, who have been given assistance in finding the necessary witness." *Id.* at 1097 (citing *United States v. Hines*, 9 Race Rel. L. Rep. 1332 (N. D. Ala. 1964) (Sumter County)).

²⁴ *Id.* at 1099.

informed when the voter registration office would be open, were not permitted to apply for registration after a prior rejection, and had their ballots rejected without notice of rejection or reason for their rejection. The lack of notice of rejection or reason for rejection failed to provide Black applicants with sufficient time or information to effectively appeal their rejection during the 30-day appeal window. In some countries, the registrars would simply close the office.²⁵ Elsewhere, registrars would simply not allow Blacks to register.²⁶ For example, in Bullock County, the Board of Registrars refused applications from Black Alabamians from 1946 until 1955.

31. Even in communities where Black Alabamians had enhanced opportunities for education and employment, elected officials' efforts to reduce and eliminate Black political participation was effective. In Tuskegee (Macon County) home of Tuskegee University,²⁷ where after World War II Blacks held a majority of the white-collar jobs and there was an educated Black middle class, unequal application of the literacy test created an environment where Black college graduates were no more likely to pass the literacy test than those who possessed slightly more than a grade school education. The Board of Registrars would also require Black but not white voters to provide the name of three

²⁵ *Id.*

²⁶ *Id.* at 1091.

²⁷ Founded in 1881 by Booker T. Washington, the Tuskegee Institute remained an "institute" until 1985 when it obtained "university" status.

registered voters who could vouch for them. Because there were so few Blacks on the voter rolls, the number of registered Black Alabamians remained low. By 1958, Blacks were 84 percent of Macon County's population, but white voters outnumbered Black voters by two and a half times.²⁸

32. In a 1956 study, a political scientist at the University of Alabama concluded that this registration process "was designed to be discriminatory" and consequently served to bar Black Alabamians from voting.²⁹ The scientist concluded that even an "honestly designed educational test" would "bar the ballot to the great mass of uneducated Negroes."³⁰

33. *United States v. Penton*, 212 F.Supp. 193 (1962), highlighted the devastating effect of not only the literacy test but also its application. The case centered on the Montgomery County Board of Registrars and their use of their discretion when reviewing the Alabama voter application form, which included a literacy test. In that specific case, the Court found that:

- Approximately 8,868 applications were filed by white persons, 4,522 by Black persons.

²⁸ Salvatore, *et al.*, *supra* n.10.

²⁹ Strong, D. S (1956). *Registration of voters in Alabama*. University of Alabama: University of Alabama Bureau of Public Administration: Tuscaloosa, AL.

³⁰ *Id.* at 120.

- Under 4 percent of the white applicants were rejected, over 75 percent of the Black applicants were rejected.
- 710 of the rejected Black applicants had 12 grades of formal education or more, six of whom had master's degrees, 152 had four years of college training, and 222 had some college education.
- Question 5 was filled out completely by the Board of Registrars for white persons but not for Black persons. On other specific questions, whites were assisted and Black persons were required to fill them out without assistance.
- In general, the application form used as a “tricky” examination for Black persons and purely to obtain substantive information from white persons; almost all Black applicants were rejected for a single error while almost 1,070 of the accepted white applications contained technical errors.³¹

34. As the federal government slowly began to adopt remedies for voting rights violations in the south, and civil rights activists worked to demonstrate the need to dismantle disenfranchisement more directly, Black Alabamians remained largely excluded from voting; in 1965, only 23 percent of Blacks in the state could vote.³²

³¹ See *Penton*, 212 F. Supp. at 196-98.

³² *Salvatore, et al., supra* n.10.

35. After the all-white primary was struck down in 1944, many counties in Alabama responded by adopting at-large elections, with the intent of preventing majority-minority communities from electing candidates of their choice. The state sought to achieve the same end in 1951 when it prohibited single-shot voting in municipal elections.

36. In 1951, a restriction on single shot voting or a full slate law was applied to all Alabama counties.³³ Prior to that provision, the at-large voting systems in some counties made it possible for Black Alabamians to elect a member of the city council if multiple seats were being filled in the same election: if they were politically cohesive, Black voters could secure the election of a Black candidate by casting only votes for that candidate and otherwise failing to cast the full number of votes suggested. The 1951 provision made single shot voting impossible by disqualifying ballots that did not make selections equal to the full slate of seats.³⁴ A proponent of the law justified its need by stating, “there are some who fear that the colored voters might be well able to elect one of their own race to the city council by single shot voting.”³⁵

37. The single shot provision was replaced by numbered places in 1961. Numbered-place laws, also used in at-large elections with multiple candidates, designate each position by a separate number, require that

³³ McCrary, *supra*, n.13.

³⁴ *Id.*

³⁵ *Id.* at 46.

each candidate qualify and run for a specific number, and allow each voter to only vote for one candidate in each number.³⁶ “Such laws are also potential means for perfecting majority control; the same jurisdiction-wide majority can control each and every seat when candidates must compete directly for specific seats.”³⁷ Steadily, Alabama jurisdictions adopted a voting system requiring at-large elections, numbered places, and a majority vote, making it virtually impossible for Blacks to elect candidates of their choice without substantial crossover voting by whites.³⁸

38. By enacting these various measures, the State sought to prevent its Black population from organizing their votes around one candidate.

39. So desperate were counties in Alabama to eliminate the Black vote that in 1957, Alabama redrew the boundaries of the city of Tuskegee to exclude Black residents to ensure that city elections could be controlled by white residents, an act the U.S. Supreme Court held was intentionally discriminatory. *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

³⁶ Derfner, A. (1973). *Racial discrimination and the right to vote*, Vanderbilt L. R. 26(3), 523-584, <https://scholarship.law.vanderbilt.edu/v1r/vol126/iss3/9/>.

³⁷ Pildes, R. H. & Donoghue, K. A. (1995). Cumulative voting in the United States. *University of Chicago Legal Forum*, 1995(1), 241-313, <http://chicagounbound.uchicago.edu/uclf/vol1995/iss1/10>

³⁸ McCrary, *supra*, n.13 at 47.

B. Modern Discrimination Against Black Alabamians

40. Following the passage of the Voting Rights Act (“VRA”) in 1965, the state relied on other administrative mechanisms to limit the political power of Black Alabamians, many of which were invalidated by federal courts. In *Sims v. Baggett*, 247 F.Supp. 96 (M.D. Ala. 1965), the court invalidated a reapportionment plan that combined majority white and majority Black counties; stating the clear purpose was to discriminate against Black voters.³⁹ In *Sims v. Amos*, 336 F.Supp. 924 (M.D. Ala. 1972), the court ruled that the use of multi-member districts tends to discriminate against Black people.⁴⁰

41. In *Dillard v. Crenshaw Cty.*, 640 F.Supp. 128 (M.D. Ala. 1986), the court found that counties’ use of at-large elections were the result of intentional discrimination. This litigation was subsequently expanded to include nearly 200 defendants, most of whom settled and agreed to eliminate their at-large systems.

42. Other court cases point to the use of administrative rules and procedures to limit the ability of Black Alabamians to fully participate in elections and other democratic processes. *See, e.g., Buskey v. Oliver*, 574 F.Supp. 41 (1983) (finding that city districting plan adopted for racially discriminatory purpose); *Bolden v. City of Mobile*, 542 F.Supp. 1050 (S.D. Ala. 1982),

³⁹ Derfner, *supra*, n.36.

⁴⁰ *Id.*

(at-large voting for city commissioners adopted with racially discriminatory purpose); *Sims v. Baggett*, 247 F.Supp. 96 (M.D. Ala. 1965) (finding that state house districts were drawn to discriminate against Black voters).

43. Due to the history described above, Alabama and its local jurisdictions became subject to the VRA's preclearance process, which required them to obtain preclearance before implementing any new policies affecting voting and registration. The preclearance requirement limited Alabama's ability to legislatively or administratively adopt rules that adversely affected the political power of Black Alabamians.

44. All told, between 1965 and 2013, at least 100 voting changes proposed by Alabama state, county, or city officials were either blocked or altered under the VRA.⁴¹ These objections included a wide range of potential changes and included districting and redistricting plans, the annexation and de-annexation of geographic areas, changes from single member districts to at-large elections, increasing the size of representative bodies, voter purges, and voter re-identification. In just one example of these incidents, after Hale County had been sent federal observers under the VRA, the county changed its electoral system from district to at-large elections. A federal district court concluded that "the change to at-large voting . . . had the purpose and . . . the effect of abridging the right to vote on the basis

⁴¹ Blacksher, *supra* n.15.

of race.” *Hale Cty. Ala. v. United States*, 496 F.Supp. 1206, 1207 (D.D.C. 1980).

45. The U.S. Supreme Court’s 2013 decision in *Shelby County v. Holder* invalidated Section 4(b) of the VRA, which provided the formula determining which jurisdictions were subject to preclearance. After *Shelby County* removed Alabama from covered status, the state rapidly made changes to voting and registration policies and procedures.

46. One of the first changes Alabama made to its voting laws was to institute one of the most rigorous voter identification requirements in the nation.⁴² This law was originally adopted in 2011. At the time, Alabama was subject to preclearance under the VRA. Alabama never even submitted the law for federal review.⁴³

47. Shortly after the *Shelby County* decision was issued, Alabama began enforcing its voter identification law. The law requires all voters to present one of 11 approved forms of identification or be positively identified by two election officials. If the voter does not have the approved identification and cannot be positively identified by two election officials, the voter may cast a provisional ballot. For the provisional ballot to be counted, the voter must present a proper form of photo

⁴² Alabama Advisory Committee to the U.S. Commission on Civil Rights (2020). *Barriers to voting in Alabama*. <https://www.usccr.gov/files/2020/2020-07-02-Barriers-to-Voting-in-Alabama.pdf>.

⁴³ Dunphy, P. (2018). *When it comes to voter suppression, don’t forget about Alabama*. Brennan Center for Justice.

identification to the Board of Registrars by 5:00 p.m. the Friday following Election Day.⁴⁴

48. Despite the various types of identification accepted, during testimony before the Alabama Advisory Committee to U.S. Commission on Civil Rights, Secretary of State John Merrill explained that “the most common forms of voter identification are state issued identification cards—such as a driver’s license, a non-driver identification, or an Alabama Photo Voter ID card.”⁴⁵ The driver’s license and nondriver identification cards can be acquired from the Motor Vehicles Division offices. The Alabama Photo Voter ID Card can be obtained from the Office of the Secretary of State, the 67 County Board of Registrar Offices, or the Secretary of State’s mobile identification unit.⁴⁶

49. However, in 2015, in response to a budget dispute, then-Governor Robert Bentley closed 31 Motor Vehicle Division offices in Alabama. In 2016, the U.S. Department of Transportation investigated the closures and concluded that they adversely affected counties with majority Black and rural populations. Statistics from the Alabama Law Enforcement Agency and census data for the state show that 8 of the 11 counties in Alabama that have a majority or near majority black

⁴⁴ See Ala. Code § 17-9-30 *et seq.*; *id.* § 17-9-30(e); *id.* § 17-9-30(d); *id.* § 17-10-1.

⁴⁵ Alabama Advisory Committee, *supra* n.42.

⁴⁶ Alabama Secretary of State (n.d.). *Application for free Alabama photo voter identification card*. <https://www.sos.alabama.gov/sites/default/files/voter-pdfs/candidateresources/ApplicationForFreeALPhotoVoterIdCard.pdf>.

population, *i.e.*, approximately 72.7 percent suffered closure of MVD offices in their counties, compared to 23 of the 56 majority white counties in the state, about 41.1 percent.

50. In response to the Department of Transportation's findings, the state re-opened offices in some of the affected counties with limited hours. Two such counties were Wilcox and Bullock. Both are poor, predominantly Black, rural counties. For one year, the Alabama Advisory Committee unsuccessfully tried to ascertain the days and hours of operation for the Motor Vehicles Division Office in Wilcox County. "When the chair of the Committee called the number that was listed for the office, no one answered the phone regardless of when she called. There was no recorded message to offer hours of operation. A call made by the Chair of the Committee to the Wilcox County clerk's office produced a suggestion that she travel to another county to obtain a driver's license."⁴⁷ Similar challenges were reported by those trying to determine the hours of operation for the Bullock County Motor Vehicles Division Office. This situation was reminiscent of counties' historical failure to provide Black residents with voting information, as discussed above.

51. One of the many observations made by the Alabama Advisory Committee was that Bullock County had no website and the information about Motor Vehicle Offices that was posted on the Alabama Law Enforcement Agency website was either incorrect or the

⁴⁷ Alabama Advisory Committee, *supra* n.42.

hours posted were not consistently kept. The Committee concluded that either possibility creates a hurdle for a voter seeking an identification from the offices in question.

52. The lack of accessible online information in the state is not limited to Motor Vehicle Offices. After conducting an extensive review of Alabama counties, researchers found that 47 of 67 counties have county websites. Of those counties, 43 had websites specifically for voting and elections.⁴⁸

53. A study analyzing the *post-Shelby County* closure of polling locations found that there were at least 66 fewer polling locations in Alabama than there were prior. The analysis also found that the reduction was the result of decisions made in 12 counties. Although the study included a relatively small sample of 18 Alabama counties and did not identify any definitive racial pattern, the authors noted concern over such a small number of counties eliminating that many polling locations.⁴⁹ For example, Daphne County, Alabama eliminated 3 of 5 polling locations; two of the three

⁴⁸ King, B.A., & Youngblood, N.E. (2016). E-government in Alabama: An analysis of county voting and election website content, usability, accessibility, and mobile readiness. *Government Information Quarterly*, 33, 715-726.

⁴⁹ The Leadership Conference Education Fund (2016). *The great poll closure*.

closed polling locations are where a majority of Daphne's Black population voted.⁵⁰

C. Political Violence and Intimidation Against Black Alabamians

54. In addition to navigating a complex system of administrative policies and procedures and cultural rules that have limited, and continue to limit, the ability of Black Alabamians to participate in the political process, they have also been intimidated against participating in social, political, and economic life by physical force and violence. Indeed, "[v]iolence was central to suppressing the Black vote in the South."⁵¹ After Reconstruction, Democrats used violence as a tactic to defeat Republicans. In 1874, "two Sumter County Republican leaders, one black and one white were killed on Election Day and a mob murdered seven Black Americans and wounded nearly 70 others."⁵²

55. Although there are various interpretations about the use of lynching to intimidate potential Black voters, many understand lynching to be a tool central to

⁵⁰ Sharp, J. (2016, August 4). Alabama city battles questions over closing precincts near black voters, https://www.al.com/news/mobile/2016/08/alabama_citybattles_questions.html.

⁵¹ Epperly, B., Wilco, C. Strickler, R., & White, P. (2020). Rule by violence, rule by law: Lynching, Jim Crow, and the continuing evolution of voter suppression in the U.S. *Perspectives on Policies* 18(3), 756-769.

⁵² Salvatore, *supra* n.10 at 10.

the suppression of Black voting rights.⁵³ “Since 1874 there have been more than 400 documented lynchings or attempted lynchings of Black men, women and children in Alabama.”⁵⁴ “Nearly 200 Reconstruction-era victims of Alabama racial violence, including those lynched, assaulted, raped, or killed throughout the state [have been identified]. Perpetrators and supporters of this violence were never prosecuted. Some went on to hold elected office, including Governor George Houston, for whom Houston County is named, and Governor Braxton Bragg Comer.”⁵⁵ Examples of this violence include:

- In Mobile County in 1865, white mobs killed an estimated 138 Black people over several months.
- In Eutaw, Alabama in November 1870, white mobs attack a political meeting of Black residents and white allies, killing four Black people.
- In November 1874 in Eufaula, Alabama, armed white men attack Black voters at the polls on election day and killed at least six Black people.

⁵³ Wells, I. B. (1900). Lynch law in America. *The Arena* (23), 15-24.

⁵⁴ Alabama Memory Project. (n.d.), *Lynching in Alabama*, <https://alabamamemory.as.ua.edu/>

⁵⁵ Equal Justice Initiative. (n.d.). *Reconstruction In America racial violence after the civil war, 1865-1876*. <https://eji.org/wp-content/uploads/2020/07/reconstruction-in-america-report.pdf>

- On September 15, 1963, the Sixteenth Street Baptist Church, a key civil rights meeting place, was bombed. Four Black girls were killed and more than 20 were injured inside the church. The bomb was planted by members of the Ku Klux Klan.
- On March 7, 1965, state and local police attacked hundreds of civil rights activists beginning a march from Selma to Montgomery. The activists were protesting the denial of voting rights for Black Americans and the murder of Jimmie Lee Jackson, a civil rights activist who had been shot by police during a peaceful protest. The protestors were attacked with billy clubs, whips, and gas masks, while crossing the Edmund Pettus Bridge in Selma; a day that would come to be known as “Bloody Sunday.”⁵⁶

56. Black Alabamians have also been subject to intimidation at the polls. In *Harris v. Graddick*, 593 F.Supp. 128, 133 (M.D. Ala. 1984), the court found that state and local officials had “intentionally created an atmosphere of fear and intimidation to keep black persons from voting” and that “[t]he present reality in Alabama is that many black citizens, particularly the elderly and uneducated, still bear the scars of this past, and are still afraid to engage in the simple act of registering to vote and voting.”

57. Cross burnings, which have “historically been used by the Ku Klux Klan and other racist organizations to

⁵⁶ *Id.*

rally supporters and terrorize black people in the South and elsewhere,” also continue to be a tool used to intimidate Blacks in the South.⁵⁷

58. In June 2020 a burning cross was placed on a bridge that crosses Interstate 85 in Macon County, Alabama.⁵⁸ Macon County is the home of Tuskegee University, a Historically Black University. Macon County has a resident population that is 80 percent Black.⁵⁹ The cross burning was ruled a hate crime by the Federal Bureau of Investigation.⁶⁰

D. Redistricting-Related Discrimination Against Black Alabamians

59. Focusing explicitly on the drawing of electoral boundaries, there is an extensive history in Alabama of racial discrimination.

60. Prior to 1960, the Legislature failed to reapportion for 50 years. As a result, Alabama’s entire legislative apportionment scheme was struck down for violating the principle of one person, one vote. *Reynolds v. Sims*,

⁵⁷ Associated Press. (2020). *Burning cross found atop interstate overpass in Alabama*. <https://abcnews.go.com/US/wireStory/deputies-investigate-cross-burning-bridge-alabama--71085645>.

⁵⁸ *Id.*

⁵⁹ US Census QuickFacts, Alabama Population, *available at* <https://www.census.gov/quickfacts/fact/table/maconcountyalabama,AL/PST045219>.

⁶⁰ WSFA News (2020, June 6). FBI: Macon County cross burning incident a hate crime. <https://www.wsfa.com/2020/06/05/suspects-sought-after-burning-cross-left-macon-county/>.

377 U.S. 533, 568 (1964). On remand, a court found that, in devising remedial maps to correct the malapportionment, the “Legislature intentionally aggregated predominantly Negro counties with predominantly white counties for the sole purpose of preventing the election of Negroes to [State] House membership.” *Sims v. Baggett*, 247 F.Supp. 96, 108-109 (M.D. Ala. 1965).

61. Following *Reynolds* and the 1970 Census, the Legislature again failed to redistrict, forcing a three judge federal court to draw new district lines. *Sims v. Amos*, 336 F.Supp. 924, 940 (M.D. Ala. 1972). In doing so, the court rejected the Alabama Secretary of State’s proposed map because of its racially “discriminatory effect” on Black voters. *Id.* at 936.

62. During the 1980 reapportionment process, the U.S. Department of Justice objected to maps drawn by the Legislature for the State House and Senate because of their discriminatory effect on Black voters in Jefferson County and the Black Belt. The State House plan reduced the number of majority-minority districts within the state. After the state redrew the map, the DOJ objected again, this time because the plan appeared to intentionally “crack” minority voters in the state’s Black Belt counties.⁶¹ A court rejected Alabama’s proposed interim remedial state maps in part because Alabama’s maps “had the effect

⁶¹ Letter from William Bradford Reynolds, Assistant Attorney Gen., Civil Rights Div., Dep’t of Justice, to Charles A. Graddick, Attorney Gen., State of Ala. (Aug. 2, 1982) as cited in Blacksher et al. (2008), 272.

of reducing the number of ‘safe’ black districts” in and near Jefferson County. *Burton v. Hobbie*, 543 F.Supp. 235, 238 (M.D. Ala. 1982).

63. Following the 1990 Census, the U.S. Department of Justice again objected to Alabama’s new proposed congressional plan, which included just one majority-Black district and “fragmented” the rest of the Black population in the state to dilute the Black vote. In its objection letter, the DOJ noted a concern of the Black community that “an underlying principle of the Congressional redistricting was a predisposition on the part of the state political leadership to limit black voting potential to a single district.”⁶²

64. In 2017, a federal court found that race predominated in the drawing of 14 state legislative districts, and that 12 of them were unconstitutional due to their inability to satisfy the strict scrutiny standard under the Equal Protection Clause. *Alabama Legislative Black Caucus v. Alabama*, 231 F.Supp.3d 1026 (M.D. Ala. 2017).

**Senate Factor 2: The extent to which
voting in the elections of the state or
political subdivision is racially polarized.**

65. As noted above, this report does not analyze the level of racially polarized occurring in Alabama; that analysis will be performed by a different expert

⁶² U.S. Dep’t of Justice Ltr. to Ala. Att’y General Evans, Mar. 27, 1992, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-1880.pdf>.

retained by Plaintiffs. Below, however, I discuss how racial attitudes and racialized politics drive the historical and ongoing polarization among Black and white Alabamians.

66. Over many decades during the Twentieth Century and into the Twenty-First Century, an important political realignment occurred that still frames politics across the United States today. A primary cause of this realignment was a shift in the stances taken by the two major American political parties on issues relating to race.

67. Following the Emancipation Proclamation and through the Reconstruction Era, many Black Americans aligned with and supported the Republican Party. At the time, the Republican Party—the party of Abraham Lincoln—was viewed as being supportive of Black American social, economic, and political interests.

68. During the Great Depression, however, the Democratic Party's New Deal offered significant assistance to Black Americans. Although President Roosevelt did not have a civil rights agenda and Black Americans experienced discrimination when trying to access New Deal Programs, Black Americans were able to participate in programs alongside whites.⁶³ While Black Americans were often formally excluded from the Democratic Party at the time, their participation in New Deal programs permitted them to participate politically. As an example, Black and white farmers

⁶³ Salvatore, *et al.*, *supra* n.10.

voted each year to determine the level of cotton production.

69. The partial relief provided by the New Deal sparked a partisan realignment among Black voters that still drives voting patterns today. In the 1936 election, for example, the majority of Black voters in the north left the Republican Party and supported the Democratic Party.⁶⁴

70. While the New Deal opened the door to this realignment, it was the parties' evolving stances on racial issues that served as the ultimate catalyst. Indeed, scholarship attributes party realignment to race as being the primary factor that "permanently rearranged the American Party system."⁶⁵

71. This partisan realignment gained its most significant momentum during the "Civil Rights Era" of the mid-Twentieth Century, most notably when President Lyndon Johnson signed the Civil Rights Act of 1964 and Voting Rights Act of 1965 into law. This era "polarized and solidified the parties' stands on issues affecting African Americans, black support for the

⁶⁴ Weiss, N. J. (1983). Farewell to the party of Lincoln: *Black politics in the age of F.D.R.* Princeton University Press: Princeton, New Jersey.

⁶⁵ Carmines EG, Stimson JA. 1989. Issue evolution: Race and the transformation of American politics. Princeton University Press: Princeton, NJ, xiii.

Democratic Party at all levels of government grew further.”⁶⁶

72. The Democratic Party’s advocacy for racial equality and justice not only attracted the support of Black Americans; it also repelled white voters to the Republican Party. “As the national Democratic party moved away from its century-long commitment to avoid challenging the Jim Crow system, the civil rights legislation proposed by Northern Democrats immediately attracted massive resistance from Southern Democrats in Congress, and support for the Democratic party began to erode among Southern whites.”⁶⁷

73. To hasten the shift of white voters to its side, the Republican Party actively adopted reactionary racial politics. Political Science scholarship substantiates that since the 1960s, the Republican Party has consistently and successfully recruited white voters by adopting racially and culturally conservative positions.⁶⁸

⁶⁶ Hutchings, V. and Nicholas V. A. (2004). The centrality of race in American politics. *Annual Review of Political Science* 7(1), 383-408, 386.

⁶⁷ Valentino, N. A., & Sears, D. O. (2005). Old times there are not forgotten: Race and partisan realignment in the contemporary South. *American Journal of Political Science*, 49(3), 672-688, 673.

⁶⁸ Boyd, James. 1970. “Nixon’s Southern Strategy: ‘It’s All in the Charts.’” *The New York Times*, <http://www.nytimes.com/packages/html/books/phillips-southern.pdf>; Edsall, Thomas B., and Mary D. Edsall. 1991. *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics*. New York: Norton; Mendelberg, Tali. 2001. *The Race Card: Campaign Strategy, Implicit Messages, and the Norm of Equality*. Princeton, NJ: Princeton University Press; Hutchings, Vincent L., and Nicholas A. Valentino.

Valentino and Sears also find that racial conservatism has become more tightly linked to both Republican presidential voting and Republican party identification in the South.⁶⁹

74. The realignment discussed above has resulted in a political system where Black Americans currently overwhelmingly identify with the Democratic Party. A 2020 analysis found that more than 60% of Black Americans identify as Democrats.⁷⁰ By contrast, white voters, especially across the South, overwhelmingly identify with the Republican Party.⁷¹

75. This historical party realignment, caused by racial politics and coupled with the continued prevalence of racial issues and the dominance of race as a political issue in the south, indicates that racial attitudes continue to structure partisan divisions in Alabama today.

2004. "The Centrality of Race in American Politics." *Annual Review of Political Science* 7:383-408.

⁶⁹ Valentino, Nicholas A., and David O. Sears. 2005. "Old Times There Are Not Forgotten: Race and Partisan Realignment in the Contemporary South." *American Journal of Political Science* 49(3): 672-688, 685.

⁷⁰ Cox, D. (2021, April 2). For black voters, friends and family may be a critical link to the Democratic Party. *Survey of American Family Life*. <https://www.americansurveycenter.org/forblack-voters-friends-and-family-may-be-a-critical-link-to-the-democratic-party/>.

⁷¹ Pew Research Center. (2014). Racial and ethnic composition of adults in the south by political party. <https://www.pewforum.org/religious-landscape-study/compare/racial-and-ethniccomposition/by/party-affiliation/among/region/south/> Pew Research Center. (n.d.). Party affiliation among adults in Alabama. <https://www.pewforum.org/religious-landscapestudy/state/alabama/party-affiliation/>.

76. Aside from the significant effect that issues relating to race have had on partisanship, race can be a deciding factor in candidate preference more generally. First, literature suggests that both black and white voters prefer to vote for candidates of their own race when a contest includes a black and white candidate.⁷² Second, there is no clear relationship between the ideology of black voters and their candidate preferences. For example, while 90% of Black voters supported Barack Obama in 2008, only 47% of Blacks identify as liberal while 45% identify as conservative.⁷³

77. Exit polls from the 2008 election demonstrate this point. They indicate that in the general election, Barack Obama, a Black man, won votes from 98% of Black Alabamians regardless of party, and John McCain, a white man, received votes from 88% of white Alabamians regardless of party. Obama won only 47% of white Democrats in Alabama, whereas McCain won 51% of white Democrats, 82% of white independents, and 98% of white Republicans.⁷⁴

78. This pattern appears within party primaries as well. During the 2008 Democratic Party Primary, Hillary Clinton, a white woman, ran in a tight two-person

⁷² Hutchings and Valentino, *supra* n.66.

⁷³ Hutchings, V., Jefferson, H., & Brown, K. (2014). Why do black Americans overwhelmingly vote Democrat? *University of Michigan Institute for Social Research Center for Political Studies*. <https://cpsblog.isr.umich.edu/?p=948&p=948>.

⁷⁴ CNN Exit Polls: 2008 Presidential General Election, available at <https://www.cnn.com/ELECTION/2008/results/polls/#val=ALPOopl>.

race against Barack Obama. Exit polls indicate that among those who voted in the Democratic primary in Alabama, 84% of Black voters supported Obama, whereas 72% of white voters supported Clinton.⁷⁵

79. The same pattern appeared in Alabama's 2008 U.S. Senate election. Exit polls indicate that 90% of Black voters regardless of party supported Vivian Figures, a Black candidate, while 89% of white voters voted for Jeff Sessions, a white candidate, regardless of party. 58% of white Democrats, 88% of white Independents, and 96% of white Republicans voted for Sessions, whereas Figures won the support of 84% of non-white voters, regardless of party.⁷⁶

Senate Factor 3: Voting practices and procedures that may enhance the opportunity for discrimination against Black Alabamians.

80. Alabama has a long history of employing voting procedures that increase the opportunity for discrimination.

81. In 1875, the state passed a voter fraud measure that made multiple voting a felony. Democrats in the state legislature argued that Blacks, but not whites, were often guilty of voting "early and often" and that it

⁷⁵ ABC News 2008 Democratic Primary Exit Poll Results, *available at* <https://abcnews.go.com/images/PollingUnit/O8DemPrimaryKeyGroups.pdf>.

⁷⁶ CNN Exit Polls: 2008 Alabama U.S. Senate General Election, *available at* <https://www.cnn.com/ELECTION/2008/results/pollsVALSO1pl>.

was an established fact that a white man cannot easily vote more than once at one election because whites “do not all look alike.”⁷⁷ In 1876, the Alabama Legislature eliminated elections in eight Black Belt counties and authorized the Governor to appoint county commissioners.

82. As discussed, in 1957, the Alabama Legislature redrew the city boundaries of Tuskegee from a square shape to a 28-sided figure. The purpose of the new figure was to carve out or exclude the Black residents of Tuskegee, who threatened to increase their political participation after passage of the 1957 Civil Right Act and increasing Black registration.

83. The changing or creation of new jurisdiction boundaries in Tuskegee represents one of many instances in which geographic boundaries have been used to dilute the voting power or exclude Black Alabamians from public spaces. As another example, in 1980, the City of Valley was incorporated in Chambers County. According to the U.S. Department of Justice, “the incorporation was especially motivated by the desire to create a separate city school system. That incorporation defined an irregularly shaped city which included six schools intended for the Valley School System, but which excluded significant areas of Black population concentration.”⁷⁸

⁷⁷ Montgomery Advertiser and Mail (March 3, 1875).

⁷⁸ Blacksher, *supra* n.15 at 5.

84. The shift from ward elections to at-large elections in counties represents another attempt on the part of whites in Alabama to limit the political power of Black Alabamians. When Barbour County changed from single-member districts to at large districts, Senator James S. Clark was quoted as saying that a reason for the change was to “lessen the impact” of a “block vote,” a term often used at the time in reference to the Black vote.⁷⁹ Following this, the Barbour County Democratic Party Executive Committee changed from ward-based to at-large districts for the party primary, despite the ruling in *Smith v. Paris* that the at-large districts violated the Fifteenth Amendment. During the trial, the party acknowledged that the at-large elections had a discriminatory impact.⁸⁰ In the *Dillard* litigation over at-large elections in Alabama, the court explained: “From the late 1800s through the present, the state has consistently erected barriers to keep Black persons from full and equal participation in the social, economic, and political life of the state.” 640 F.Supp. 1347, 1360 (M.D. Ala. 1986). Because of this the court expanded the suit to include 17 county commissions, 28 county school boards, and 144 municipalities which were using racially motivated at-large voting rules.⁸¹ After the initial *Dillard* decision many of the local jurisdictions who were defendants in the class action suit changed from at-large to single member districts, some jurisdictions refused to enter consent decrees,

⁷⁹ McCrary, *supra*, n.13 at 39

⁸⁰ *Id.*

⁸¹ Blacksher, *supra* n.15 at 9.

and others required extended trial proceedings and court ruling before the all-white governing bodies would agree to a consent decree.⁸²

85. Although the *Dillard* decisions may have resulted in increased opportunities for representation for Black Americans in local governments, highly racialized voting patterns persisted.

An expert analysis of the 2004 general election for the seven members of the Chilton County, Alabama Commission, who, pursuant to a 1987 consent decree, are elected at-large using cumulative voting rules, provides dramatic evidence of how white voters in Alabama remain unwilling to vote for Black candidates. Commissioner Bobby Agee, who is Black, has served continuously on the commission since 1988 and has earned the respect of his fellow commissioners. But even the power of incumbency and familiarity has earned him no support from the white electorate.⁸³

According to testimony,

Mr. Agee, a longtime incumbent on the county commission, is the overwhelming choice of the African American voters. His support among African American voters in the county ranges, across the analyses, from an estimated 5.2 votes per voter to 5.6. He is the first choice of African American voters to represent them on

⁸² *Id.* at 15.

⁸³ *Id.* at 277.

the commission in every analysis. In contrast, his support among the non-African American voters is minimal.⁸⁴

86. Until 2021, municipalities in Alabama continued to use at-large elections with numbered posts. In recent years, federal courts have struck down or altered these voting systems. *See, e.g., Jones*, 2019 WL 7500528, at *4; *Ala. State Conf of the NAACP v. City of Pleasant Grove*, No. 2:18-cv-02056, 2019 WL 5172371, at *1 (N.D. Ala. Oct. 11, 2019).

87. In addition to at-large elections, the single shot provision applied in 1951 and the numbered place laws adopted in 1961, both discussed above, made it nearly impossible for Black voters to elect a Black candidate of their choice without substantial crossover voting by whites.⁸⁵

Senate Factor 5: Effects of Alabama’s history of discrimination on Black Alabamians today.

88. There are many areas in Alabama where Black Americans disproportionately bear the negative effects of discrimination. These include education, economics, housing, criminal justice, and health. Disparities across these areas hinder Black Alabamians’ ability to participate effectively in the political process.

⁸⁴ *Id.*

⁸⁵ McCrary, *supra* n.13 at 47.

A. Education

89. Current racial educational discrepancies in Alabama are the result of the state's historical, intentional discrimination against Black Alabamians. During the 1901 constitutional convention, some convention delegates intentionally "sought to deny [education] rights because they envisioned a future race war, in which education would better equip Blacks to wage." This, coupled with the knowledge that Blacks within Alabama "had the most to gain from public services [such as] . . . public schools," the drafters of the 1901 Constitution set out to ensure that "there was neither the will nor the money to provide such services" as they would "disproportionately favor" Blacks.

90. As such, the 1901 Constitution included a cap placed on the taxes that could be collected to fund state services such as public education.⁸⁶ The property tax cap, coupled with the fact that individual local governments do not have the authority to increase their tax rates, has resulted in a system where poorer, less affluent local governments perpetually have less to spend per pupil.

91. In *Weissinger v. Boswell*, 330 F.Supp. 615 (M.D. Ala. 1971), the court found that the assessment ratios were being applied unequally across county lines, in violation of the Equal Protection Clause of the Fourteenth

⁸⁶ Harvey, T. I. (n.d.). Public school finance programs of the United States and Canada:1998-99: Alabama. *National Center for Educational Statistics*. <https://nces.ed.gov/edfin/pdf/StFinance/Alabama.pdf>.

Amendment. In response the state adopted the Lid Bill which caps property tax rates. However, the cities of Mountain Brook, Vestavia Hills, Homewood, and Huntsville—all of which are predominantly white—are all exempt from the limits of the Lid Bill.⁸⁷ These school districts are also incidentally among the top-ranked school districts in student performance.⁸⁸

92. A report by the Public Affairs Research Council of Alabama (“PARCA”) finds that Alabama ranks 39th among the 50 states when it comes to per-pupil spending on K-12 education. Further, according to data from the Alabama Department of Education, there is a wide disparity between spending in Alabama school systems, ranging from over \$12,000 per student in Mountain Brook to \$7,615 per pupil in Autauga County.⁸⁹ Differences in local property values enable wealthier districts to spend more on education and potentially create unequal opportunities to learn.⁹⁰

⁸⁷ Mountain Brook is 97% white, Vestavia Hills is 88% white, Homewood is 78% white, and Huntsville is 61% white. See US Census QuickFacts, Alabama Population, *available at* <https://www.census.gov/quickfacts/fact/table/vestaviahillscityalabama,mountainbrookcityalabama,huntsvillecityalabama,US/PST045219>.

⁸⁸ Guyse, Z.L. (2013) Note: Alabama’s original sin: Property taxes, racism, and constitutional reform in Alabama, *Alabama Law Review*, 65, 519-538.

⁸⁹ The city of Mountain Brook is 97% white and 1% Black, while Autauga County, Alabama is 76% white and 20% Black.

⁹⁰ Public Affairs Research Council of Alabama (2018). Alabama priorities K-12 education brief. https://parcalabama.org/wp-content/uploads/2018/10/Alabama-Priorities-K-12-Education-Brief.pdf?utm_source=K-12+Education+Ranks+%231+Among+Alabama+

93. As discussed in greater detail below, Black Alabamians are more likely to live in poverty than their white counterparts. Thus, Black children in Alabama are more likely to live in poverty than their white peers and are more likely to find themselves in school systems with significantly inadequate funding.⁹¹

94. Throughout the discipline of political science and public administration it is understood that interaction with public institutions can produce “spillover” effects that can influence the likelihood of an individual participating politically. There is considerable scholarship that suggests that interactions with the education system and educational attainment affect political participation.

95. The transcendent power of education has been studied extensively; Black people who are more educated are more likely to participate in politics.⁹² Considerable subsequent scholarship supports these initial findings.⁹³

Voter+Priorities&utm_campaign=PARCA+2018&utm_medium=email.

⁹¹ Alabama Possible. (2020). Barriers to Prosperity: Data Sheet 2020: Poverty Rate in Alabama. https://alabamapossible.org/wp-content/uploads/2020/05/AP_PovertyFactSheet_2020_Web.pdf.

⁹² R.E. Wolfinger, S.J. Rosenstone (1980) *Who Votes?* Yale University Press: New Haven, CT; Abney, F. G. (1974). Factors related to Negro voter turnout in Mississippi. *The Journal of Politics*, 36(4), 1057-1063.

⁹³ Miller, W. E. (1992). The Puzzle Transformed: Explaining Declining Turnout. *Political Behavior*, 14(1), 1-43; Rosenstone, S.J. & Hansen, J.M. (1993) *Mobilization, participation, and democracy in America*. New York: Macmillan; Verba, S., Lehman Schlozman,

96. According to political scientist Dr. Barry C. Burden, the connection between education and political participation can be divided into three categories. “First, education provides people with the skills to make sense of the political world. Second, it makes it easier to navigate voter registration requirements and other impediments to voting. Third, classroom instruction and social networks in which higher educated people are situated socialize a sense of civic duty and expose them to elite recruitment efforts.”⁹⁴

97. Scholar Meghan Condon also suggests that the verbal skills that individuals acquire in school affect political participation in adulthood.⁹⁵ Namely, when young people learn to use their voices, they are more likely to speak up as participatory adults.⁹⁶

98. There are other racial disparities in the education system, such as the degree of discipline exacted upon Black students compared to their white peers and exposure to educational enhancements. A recent report by the PARCA found that in schools across Alabama, Black students are more likely to receive harsher

K., & Brady, H. (1995). *Voice and equality. Civic voluntarism in American politics*. Cambridge, MA: Harvard University Press.

⁹⁴ Burden, B.C. (2009). The dynamic effects of education on voter turnout. *Electoral Studies*, 28(4), 540-549, 542, available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.706.6418&rep=repl&type=pdf>.

⁹⁵ Condon, M. (2015). Voice lessons: Rethinking the relationship between education and political participation. *Political Behavior*, 37(4), 819-843, 837.

⁹⁶ *Id.* at 819.

disciplinary measures than white students for similar offenses. Further, PARCA finds that while Black students comprise 33 percent of students in Alabama's public schools, they account for 60 percent of all reported disciplinary incidents. "The proportion of Black students receiving out-of-school suspensions is markedly higher than for white students, who are more likely to receive the less severe in-school suspensions."⁹⁷ Black students in Alabama are also more likely to receive an out of school suspension than white students for the same infraction.⁹⁸ Being suspended or expelled increases the odds of dropping out of high school.⁹⁹

99. Black children are also more likely than their white peers to be referred to law enforcement in 32 Alabama school districts, a referral that can trigger a series of events that can lead to a criminal record with lifelong consequences.¹⁰⁰

100. A similar project found that in addition to disparities in punishment, Black students nationally are

⁹⁷ Dailey, D. (2020, July 1). School discipline and race in Alabama. *Public Affairs Research Council of Alabama*. <http://parcalabama.org/school-discipline-and-race-in-alabama/>.

⁹⁸ *Id.*

⁹⁹ Pesta, R. (2018). Labeling and the differential impact of school discipline on negative life outcomes: Assessing ethno-racial variation in the school-to prison pipeline. *Crime & Delinquency*, 64(11), 1489-1512.

¹⁰⁰ Alabama Appleseed Center for Law and Justice. (n.d.) *Racial justice: It's past time to reckon with racial justice in Alabama*. <https://www.alabamaappleseed.org/racial-justiceittoggle-id-1>.

3.7 times as likely to be suspended as white students.¹⁰¹ There are also racial disparities between Black and white students and their ability to access educational enhancement opportunities while in school. White students are 1.7 times more likely to be enrolled in advanced placement (AP) courses than their Black peers.¹⁰² Black students are also less likely to be involved in gifted and talented programs when compared to their white peers.¹⁰³ The study also finds that Black students who have been suspended or expelled are more likely to engage in criminal behavior than white students.¹⁰⁴ This study concludes that, for Black students, the effect of being labeled “a troublemaker” in adolescence may have a strong influence on outcomes in adulthood.¹⁰⁵

101. Another scholar finds that the stigma associated with the label “felon” was stronger for Blacks than whites.¹⁰⁶ Black job applicants with a criminal record were the least likely to receive a call back for an

¹⁰¹ Groeger, L.V., Waldman, A. Eads, D. (2018, October 16). Miseducation: Is there racial inequality at your school? *Propublica*. <https://projects.propublica.org/miseducation/>.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 1499-1501.

¹⁰⁵ More recent scholarship has identified a similar pattern. See Hermez, P., Brent, J. J., & Mowen, T. J. (2020). Exploring the school-to-prison pipeline: How school suspensions influence incarceration during young adulthood. *Youth violence and juvenile justice*, 18(3), 235-255.

¹⁰⁶ Pager, D. (2003). The mark of a criminal record. *American Journal of Sociology*, 208(5), 937-975.

interview when compared to white job applicants with a criminal record.

102. Education has also been identified as a determinant of health. Thus, when Black students are disproportionately removed from the classroom because of suspension and expulsion, existing health disparities are exacerbated.¹⁰⁷

B. Economic Disparities

103. In addition to disparities in educational experiences between Black and white Alabamians, there are also economic disparities between racial groups in the state. In terms of employment, the unemployment rate for African American workers (4.6 percent) is twice that of White workers (2.5 percent).¹⁰⁸ Black Alabamians are almost twice as likely to be unemployed when compared to their white counterparts. This disparity in unemployment persists across all education levels.¹⁰⁹ As an example, the unemployment rate for Black residents with a Bachelors degree or higher is 5 percent, compared to 3 percent for comparable white residents.

¹⁰⁷ Gonzalez, T., Etow, W., & De La Vega, C. (2019). Health equity, school discipline reform, and restorative justice. *Journal of Law, Medicine & Ethics*, 4(S2), 47-50.

¹⁰⁸ Moore, K. (2021). State unemployment by race and ethnicity. *Economic Policy Institute*. <https://www.epi.org/indicators/state-unemployment-race-ethnicity/>.

¹⁰⁹ Crowder, J.A., Bastien, A., Treuhaft, S., Scoggins, J. and Stephens, P. (2018). Advancing employment equity in Alabama. Alabama Asset Building Coalition. https://nationalequityatlas.org/sites/default/files/Employment_Equity-Alabama_04_03_18.pdf.

The unemployment rate for Blacks with less than a high school diploma is 24%, compared to 15% for comparable whites. Similar disparities exist between Blacks and whites with a high school diploma, some college, and an Associate's degree.

104. In terms of earning power, according to the National Women's Law Center, Black women in Alabama typically make \$0.59 for every dollar earned by their white male counterparts.¹¹⁰

105. Black Alabamians also experience poverty at more than twice the rate of whites. Indeed, the child poverty rate for Black Alabamians is 34.1%, while the same rate for white children is 13.2%.¹¹¹ As such a quarter of Black households in Alabama rely on food stamps, compared to only 8.2% of white households.)¹¹²

106. The median household income of Black Alabamians is \$35,900, nearly half the white median household income of \$59,966.¹¹³

107. Economic disparities, similar to disparities in education, can affect the likelihood of an individual exercising their right to vote. Political science scholarship has demonstrated that voting is strongly correlated

¹¹⁰ Temple, B., & Tucker, J., National Women's Law Center, *Equal Pay for Black Women*, July 2017, available at <https://nwlc.org/wp-content/uploads/2017/07/Equal-Pay-for-BlackWomen.pdf>.

¹¹¹ U.S. Census Bureau; American Community Survey, 2019 American Community Survey 1-Year Estimates, Table S0201.

¹¹² *Id.*

¹¹³ *Id.*

with income.¹¹⁴ This is particularly true in the United States.¹¹⁵ Galbraith and Hale find that individuals who live in states with high levels of income inequality are less likely to vote.¹¹⁶

108. Similar findings are reported by Macdonald, who finds that income inequality can demobilize voters but that the relationship is not consistent across elections.¹¹⁷ The effect of income inequality in lower participation is more evident in midterm election years when compared to presidential election years.

¹¹⁴ Verba, S., Lehman Schlozman, K., & Brady, H. (1995). *Voice and equality. Civic voluntarism in American politics*. Cambridge, MA: Harvard University Press; Verba, S., Nie, N.H., & Jae-on, K. (1978). *Political participation and political equality. A seven-nation comparison*. University of Chicago Press: Chicago, IL; Verba, S., Lehman Schlozman, K., Brady, H., & Norman, N. N. (1993). 'Citizen activity: Who participates? What do they say? *American Political Science Review*, 87(2), 303-18; Verba, S., & Nie, N. (1972). *Participation in America: Political democracy and social equality*. Harper & Row, Publishers, Inc. New York, New York.

¹¹⁵ Albert, J., and Kohler, U. (2010). 'The Inequality of Electoral Participation in Europe and America and the Politically Integrative Functions of the Welfare State, (in J. Alber and N. Gilbert, eds.), *United in Diversity? Comparing Social Models in Europe and America*. Oxford: Oxford University Press, 62-90.

¹¹⁶ Galbraith, J. K., & Hale, J. T. (2008). State Income Inequality and Presidential Election Turnout and Outcomes. *Social Science Quarterly*, 89(4), 887-901.

¹¹⁷ Macdonald, D. (2021) When does inequality demobilize? New evidence from the American states, *Electoral Studies*, 70, 1-8.

C. Criminal Justice and Felony Disenfranchisement

109. Felony disenfranchisement is “the practice of removing the right to vote upon conviction for a felony level offense.”¹¹⁸ These laws “can be viewed as part of a larger movement to maintain control over access to the ballot following the gradual establishment of white male suffrage.”¹¹⁹ Only four states had disenfranchisement laws prior to 1840, but between 1840 and the beginning of the Civil War, fourteen states adopted such laws.¹²⁰ In the years that followed the Civil War, 11 more states passed such laws for the first time or broadened an existing law. The adoption or expansion of felony disenfranchisement laws across the southern states occurred alongside literacy tests and poll taxes. The expansion of disenfranchisement laws included serious crimes like treason, but also minor crimes like vagrancy, petty larceny, miscegenation, bigamy and the receiving of stolen goods. These were crimes of which Black Americans were more likely to be accused, charged, and convicted.¹²¹ Using the criminal code to

¹¹⁸ Manza, J. and Uggen, C. (2008). *Locked out: Felon disenfranchisement and American democracy*. New York, NY: Oxford University Press.

¹¹⁹ Uggen, C., Manza, J., & Behrens, A. (2003). Felony voting and the disenfranchisement of African Americans. *Souls*, 5(3), 48-57, 49.

¹²⁰ *Id.*

¹²¹ Ewald, A. C. (2002). “Civil death”: The ideological paradox of criminal disenfranchisement law in the United States. *Wisconsin Law Review*, 5, 1045-1138, 1088-1089; Keyssar, A. 2009. *The right to vote: The contested history of democracy in America*. New York: Basic Books, 131, 356-364; Brooks, G. (2005).

target Blacks has remained consistent: “for the same criminal behavior, poor and/or non-white people are more likely to be arrested; if arrested, they are more likely to be convicted; if convicted, they are more likely to be sentenced to prison; if sentenced to prison, they are more likely to be given longer terms, than well off and/or white people.”¹²² Trends in arrest, prosecution, and sentencing also result in African Americans being disproportionately affected by felony disenfranchisement laws.

110. Alabama originally adopted disenfranchisement for those convicted of “vague acts of moral turpitude” alongside the other voting restrictions in the 1901 Constitution discussed above. During that convention, one proponent estimated that “the crime of wife-beating alone would disqualify sixty percent of Negroes.”¹²³

111. Historically, felony disenfranchisement has been an effective means of reducing the voting power of Black voters because of racially disparate incarceration rates.¹²⁴ In a review of state disenfranchisement laws from 1850-2002, scholars find that states with

Felon disenfranchisement: Law, history, policy, and politics, 32 *Fordham Urban Law Journal*, 32, 101-148.

¹²² Reiman, Jeffrey (1995). *The Rich get Richer and the Poor get Prison* (Fourth ed.). Boston, Massachusetts: Allyn & Bacon. 135.

¹²³ McMillan, M.C. (1955). *Constitutional development in Alabama, 1798-1901. A study in politics, the Negro, and sectionalism*. By Malcolm Cook McMillan. University of North Carolina Press: Chapel Hill, NC.

¹²⁴ Uggen, et. al, *supra*, n.119 at 51.

larger proportions of non-whites in prisons are more likely to pass restrictive felony disenfranchisement laws.¹²⁵ To this point, two percent of Alabama's prison population was nonwhite in 1850 compared to 74 percent in 1870.

112. Because Alabama has significantly disparate incarceration rates, the law has a largely disproportionate impact on Black voters. According to the September 2021 Alabama Department of Corrections Statistical Report, Black Alabamians make up more than half (53.3%) of the prison population in the state; even though Black Americans are a little more than a quarter (26.8%) of the state population. White Alabamians, in spite being 69% of the population, are only 45.9% of the prison population.¹²⁶ The incarceration rate in Alabama is 1,132 Black residents in prison per 100,000 Black residents in the state and 421 white residents in prison per 100,000 white residents in the state.¹²⁷

113. These disparities make Alabama an outlier among other states. At the time of the 2020 presidential election, 5.2 million or 2.27 percent of voting age individuals in the United States were unable to vote due to felony conviction. In Alabama, 15.55 percent of

¹²⁵ *Id.*

¹²⁶ Alabama Dep't of Corrections (Sept. 2021) *Alabama Dep't of corrections monthly statistical report*, available at <http://www.doc.state.al.us/docs/MonthlyRpts/September%202021.pdf>

¹²⁷ Nellis, A. (2021). The color of justice: Racial and ethnic disparity in state prisons. *The Sentencing Project*. <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.

Black Americans are disenfranchised due to felony convictions, compared to just 8.94 percent of all voting-age Alabamians.¹²⁸ The law disenfranchises more than one in seven Black Alabamians, twice the national average.¹²⁹

114. Contemporary felony disenfranchisement laws in the United States can be divided into five categories: no disenfranchisement; disenfranchisement in prison; disenfranchisement in prison and parole, disenfranchisement in prison, parole, and probation, disenfranchisement in prison, parole, probation, and post-sentence for some or all offenses. Alabama falls into the latter category of disenfranchisement while under supervision and post-sentence for some crimes.

115. Prior to 2017, Alabama had no prescribed list of crimes that constituted “moral turpitude” and therefore were disenfranchising. The result of this was a system where county registrars would use their discretion on a case-by-case basis and make decisions about which crimes were moral turpitude and covered by section 182 of the 1901 Constitution. Although section 182 was struck down in *Hunter v. Underwood*, 471 U.S. 222 (1985), Amendment 579 was added to the Alabama Constitution in 1996. Unlike Section 182, Amendment 579 did not list the felonies an individual could be

¹²⁸ Uggen, C. Larson, R., Shannon, S., & Pulido-Nava, A. (2020). Locked out 2020: Estimates of people denied voting rights due to felony conviction. *The Sentencing Project*. <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>.

¹²⁹ *Id.* at 4.

disenfranchised for but barred “any person convicted of a crime of moral turpitude.” This resulted in a system where a crime could be moral turpitude in one county and not moral turpitude in the another. This law was inconsistently applied and disproportionately disenfranchised African Americans.¹³⁰

116. In 2017 the Alabama State legislature passed the Moral Turpitude Act, which clarified the 47 felonies considered to be crimes of moral turpitude.¹³¹ A 2016 study that compared a list of all Alabamians whose voter registration had been cancelled or rejected because of a felony conviction to the Alabama Criminal Records Database found that between 29,000 and 36,000 individuals who had been removed from voter rolls or denied registration were in fact eligible to vote under the Moral Turpitude Act because they had not been convicted of disqualifying offenses.¹³²

117. Despite passage of the 2017 law clarifying which crimes are disenfranchising, there has been no effort on the part of the state to inform the thousands of Alabamians who, prior to 2017 may have been told that they were ineligible due to their felony conviction(s),

¹³⁰ Harvard Law Review. (2018). Thompson v. Alabama: District court finds no irreparable injury from the State’s lack of notice to people with felony convictions.

<https://harvardlawreview.org/2018/05/thompson-v-alabama/>.

¹³¹ Alabama Code §17-3-30.1.

¹³² Alabama Advisory Committee, *supra* n.42.

but for whom the Moral Turpitude Act clarified that they are indeed eligible to vote.¹³³

118. Although the state has a process to acquire a Certificate of Eligibility to Register to Vote (“CERV”) which restores the voting rights for those with felony convictions, research suggests that the completion of the CERV for the restoration of voting rights is rare. In Alabama there have been approximately 3,493 voting rights restorations from 2016 to 2020.¹³⁴ In addition to the loss of the right to vote, Alabama also denies those with felony convictions the ability to participate politically by holding office, even among those who have had their voting rights restored.¹³⁵

119. Who is drawn or welcomed into political life along with a citizen’s goals, beliefs, and identity can all be affected by the policies and institutions that govern them. Felony disenfranchisement policies, especially those that disenfranchise citizens post-sentence for some or all felonies, limit or eliminate the ability of returning citizens to experience the full rights of citizenship, relegating them to a second-tier or second-class citizenship in which they have limited social, political,

¹³³ Harvard Law Review, *supra* n.130.

¹³⁴ *Id.*

¹³⁵ Alabama Code §36-2-1; Sylacauga News. (2021). *Breaking news: Attorney General’s office confirms that convicted felons may not hold office*. <https://www.sylacauganews.com/local/breaking-news-attorney-generals-office-confirms-that-convicted-felons-may-not-hold-public-office>.

and economic access.¹³⁶ The decision to not actively inform individuals that they may be eligible to vote with the passage of the 2017 Moral Turpitude Law, or even educate potentially affected communities, exacerbates pre-existing inequalities in political power that disproportionately affect Black Alabamians.

120. The Census Bureau counts incarcerated people as residents of the towns where they are confined. Although some states adjust the Census counts to place incarcerated individuals in their home districts for redistricting, Alabama is one of the many states that does not. This practice of counting incarcerated individuals where they are incarcerated as opposed to their last known home address is known as “prison gerrymandering.” Once convicted and sentenced to prison, individuals are, on average, incarcerated more than 100 miles away from their homes. Only about 36 percent of incarcerated persons reside in prisons less than 100 miles from their previous address.¹³⁷ Thus, the process of prison gerrymandering moves political power from one region of the state to another.

¹³⁶ Mettler, S., & Soss, J. (2004). The consequences of public policy for democratic citizenship: Bridging policy studies and mass politics. *Perspectives on Politics*, 2(1), 55-73; Shklar, J. (1991). *American citizenship: The quest for inclusion*. Harvard University Press, Cambridge MA; Weaver, V., & Lerman A. (2010). Political Consequences of the Carceral State. *American Political Science Review*, 104(4), 817-833.

¹³⁷ Bureau of Justice Statistics. (2004). *Survey of inmates in state correctional facilities*. <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=275>.

121. Although some Alabama counties adjust the Census counts, many do not.¹³⁸ Given this, there are several counties in Alabama with large prison populations relative to the actual population. In these counties there are districts whose populations are inflated with non-resident inmates.¹³⁹ As an example, “in Bibb County the prison population from Bibb Correctional Facility was included as part of a commission district population. As a result, 21% of the 5th district is incarcerated. In terms of voting power, every 79 residents in District 5 have as much political power as 100 residents in other non-prison districts. Other counties, including Talladega County and Coosa County, use the prison population to pad their districts, as well.”¹⁴⁰

122. In the 2010 Census, more than 34,000 Alabama residents were counted in the wrong place because the Census Bureau treats prisons as if they are residential homes.¹⁴¹

¹³⁸ Escambia County, for example, removes the incarcerated population before county commissioner lines are drawn. Marcous, L. (2010, August 9). Alabama county commissioners may be in for an unpleasant surprise in 2011. *Prison Policy Initiative*. <https://www.prisonersofthecensus.org/news/2010/08/09/alabama/>

¹³⁹ Prison Policy Initiative (2010a). Fixing prison-based gerrymandering after the 2010 census: Alabama. <https://www.prisonersofthecensus.org/50states/AL.html>.

¹⁴⁰ *Id. supra* n.127; *id. supra* n.126.

¹⁴¹ *Id.* at n.126.

D. Health Insurance and Health Outcome Disparities

123. Black Alabamians also experience inequity in access to healthcare and health outcomes. 19 percent of African Americans are uninsured compared to 12.9 percent of their white counterparts.¹⁴² Further, because African Americans tend to live in poorer communities in Alabama, they have less access to healthcare services, and have higher instances of chronic disease.¹⁴³ The infant mortality rate is more than two times higher among African American infants (13.4%) than Caucasian (6.5%).¹⁴⁴

124. Black women in Alabama have significantly higher rates of breast cancer incidence than white women in Alabama. This is unique because in the whole United States, white women have significantly higher breast cancer incidence rates than Black women. White males in Alabama have approximately the same incidence and mortality rates for prostate cancer as the average American white male, while Black males in Alabama have both higher incidence

¹⁴² Alabama Public Health (n.d.). Uninsured population. https://www.alabamapublichealth.gov/healthrankings/assets/atc_uninsured_population_2012.pdf.

¹⁴³ Alabama Public Health (2021). Vulnerable populations. <https://www.alabamapublichealth.gov/covid19/populations.html>.

¹⁴⁴ Alabama Public Health (2021). Infant mortality. https://www.alabamapublichealth.gov/healthrankings/assets/ppo_infant_mortality_2011_2013.pdf.

and mortality rates than their United States comparison group.¹⁴⁵

125. In Alabama, Black residents are significantly more likely to have and die from diabetes and stroke than white residents.¹⁴⁶

126. Quality of health and access to healthcare can also influence voting and reduce electoral participation. For example, poor health reduces the likelihood that low-income citizens will vote while high-income citizens continue to turnout to vote regardless of their underlying health conditions.¹⁴⁷

127. Evaluating the effect of Medicaid expansion on voter turnout for low-income citizens, Haselswerdt finds that the increases in Medicaid enrollment that occur as a consequence of Medicaid expansion are related to higher voter turnout in those states. Haselswerdt suggests that these increases, in part, are a result of increases in participation among new Medicaid

¹⁴⁵ Alabama Public Health. (2019). Diabetes. <https://www.alabamapublichealth.gov/healthrankings/diabetes.html>.

¹⁴⁶ Alabama Public Health. (2019). Cancer. <https://www.alabamapublichealth.gov/healthrankings/cancer.html>; Alabama Public Health (2019). Cardiovascular disease. <https://www.alabamapublichealth.gov/healthrankings/cardiovascular.html>.

¹⁴⁷ Gregory Lyon, G. (2021). The Conditional Effects of Health on Voter Turnout. *Journal of Health Politics, Policy and Law*, 46(3): 409-433; Pacheco, J., & Fletcher, J. (2015). Incorporating health into studies of political behavior: evidence for turnout and partisanship." *Political Research Quarterly* 68(1), 104-116; Mattila, M., Soderlund, P., Wass, H. Rapeli, L. (2013). Healthy voting: The effect of self-reported health on turnout in 30 countries, *Electoral Studies*, 32(4), 886-891.

enrollees. Specifically, Haselwerdt evaluates the relationship between Medicaid expansion in the states and voter turnout in 2012 and 2014 United State House of Representatives races. Haselwerdt finds that relative to the 2012 election, voter turnout in 2014 increased in those states that implemented Medicaid expansion through the ACA.¹⁴⁸ This finding is particularly noteworthy because increases in Medicaid enrollment are generally associated with decreased voter turnout.¹⁴⁹ Alabama is one of the 12 states that has not expanded Medicaid.

Senate Factor 6: Overt and subtle racial appeals in Alabama campaigns.

128. Overt and subtle racist appeals have been used throughout the state's history to persuade or dissuade Alabama voters from voting for certain candidates for political office and ballot measures. Similar language has been used by elected officials to persuade or dissuade their peers in supporting or opposing legislation.

129. At the 1901 Alabama Constitutional Convention, the Democratic Party was explicit in stating that the goal of the convention was to establish white supremacy in the state. During the convention,

¹⁴⁸ Haselwerdt J. (2017). Expanding Medicaid, expanding the electorate: The Affordable Care Act's short-term impact on political participation. *Journal of Health Politics, Policy and Law*, 42(4): 667-695.

¹⁴⁹ Michener JD. (2017). People, places, power: Medicaid concentration and local political participation. *Journal of Health, Politics, Policy and Law*, 42(5):865-900.

convention president John B. Knox's opening address, stated

In my judgment, the people of Alabama have been called upon to face no more important situation than now confronts us, unless it be when they, in 1861, stirred by the momentous issues of impending conflict between the North and the South, were forced to decide whether they would remain in or withdraw from the Union. Then, as now, the negro was the prominent factor in the issue.¹⁵⁰

He then goes on to say, "And what is it that we want to do? Why, it is, within the limits imposed by the Federal Constitution, to establish white supremacy in this State."¹⁵¹

130. In the Twentieth Century, Alabama was a primary target of the Southern Strategy. Initially adopted by Barry Goldwater, the Southern Strategy "dictated a posture of benign neglect toward the aspirations of Black America."¹⁵² During the Civil Rights Movement, the Southern Strategy relied on appeals to racism

¹⁵⁰ Alabama Constitutional Convention (1901). *Journal of the proceedings of the Constitutional convention of the state of Alabama: held in the city of Montgomery, commencing May 21st, 1901*. Montgomery: The Brown printing company.

¹⁵¹ *Id.*

¹⁵² Maxwell, Angie. (2019, July 26). What we get wrong about the southern strategy. *The Washington Post*. <https://www.washingtonpost.com/outlook/2019/07/26/what-we-get-wrong-about-southern-strategy/>; Tindall, G. B. (1971). Southern Strategy: A Historical Perspective. *The North Carolina Historical Review*, 48(2), 126-141.

against African Americans, to gain the support of white voters in the south, particularly those that had traditionally supported the Democratic Party. The Southern Strategy appealed to the racial grievances of white Southerners to gain their political support in electoral contests. The Southern Strategy was also used by Democrats in the south to separate their political ideals from Democrats in the North.¹⁵³

131. Governor George Wallace, a Southern Democrat and staunch segregationist who was elected during the Civil Rights Era, during his inauguration speech for Governor in January 1963 stated,

Today I have stood, where once Jefferson Davis stood, and took an oath to my people. It is very appropriate then that from this Cradle of the Confederacy, this very Heart of the Great Anglo-Saxon Southland, that today we sound the drum for freedom as have our generations of forebears before us done, time and time again through history. Let us rise to the call of freedom – loving blood that is in us and send our answer to the tyranny that clanks its chains upon the South. In the name of the greatest people that have ever trod this earth, I draw the line in the dust and toss the gauntlet before the feet of tyranny . . . and I say . . . segregation today . . . segregation tomorrow . . . segregation forever.

¹⁵³ Maxwell, Angie. (2019, March 28). *The long southern strategy. How chasing white voters the south changed American politics* [Video]. University of Arkansas Prior Center for Oral and Visual History; Maxwell, *supra* n.152.

132. Martin Luther King described Wallace as, “perhaps the most dangerous racist in America today.” In a 1965 interview King also stated, “I am not sure that he believes all the poison that he preaches, but he is artful enough to convince others that he does.”¹⁵⁴ Whether he believed the rhetoric or not, for Wallace, the strategy was successful not only in Alabama but also across the county when he ran for president in 1968 as an independent as he was able to demonstrate that there were millions of angry whites who were willing to vote for a “vulgar racist whose policy proposals were scarcely more than slogans.”¹⁵⁵

133. Although it has evolved, the use of racist rhetoric and imagery has remained a tool that is used by political candidates in Alabama to this day. The use of more subtle imagery and coded language in contemporary political campaigns is what Maxwell might refer to as a part of “the Long Southern Strategy,” a strategy that modifies racial language and imagery in a way that fits the political and social moment.¹⁵⁶

¹⁵⁴ Wallace, George Corely, Jr. (n.d.) Stanford Martin Luther King, Jr. Research and Education Institute. <https://kinginstitute.stanford.edu/encyclopedia/wallace-george-corley-jr>.

¹⁵⁵ Mayer, J.D. (2001) Nixon rides the backlash to victory: Racial politics in the 1968 presidential campaign, *The Historian*, 64(2), 351-366.

¹⁵⁶ Barber, B. (2021, January 22). Political scientist Angie Maxwell on countering the ‘long southern strategy.’ *Facing South*. <https://www.facingsouth.org/2021/01/political-scientist-angiemaxwell-countering-long-southern-strategy>.

134. In 2010, gubernatorial candidate Tim James released a campaign ad in which he asserted, “This is Alabama; we speak English. If you want to live here, learn it.”¹⁵⁷

135. Also in 2010, a group of Alabama state senators were recorded discussing strategies to suppress Black voter turnout and referred to Black Alabamians as “Aborigines” and “Indians.” The senators also stated that if a ballot measure to legalize electronic bingo was included on the ballot “every Black in this state will be bused to the polls . . . [e]very Black, every illiterate will be bused on HUD financed buses.”¹⁵⁸

136. In 2014, Alabama Representative Mo Brooks repeatedly asserted that Democrats were “waging a war on whites.”¹⁵⁹

137. In 2017, at a campaign rally in Midland City, Kayla Moore, wife of Senate candidate Roy Moore, touted her husband’s appointment of the first Black marshal at the Alabama Supreme Court as proof that he supported the rights of African Americans: “Fake news would also have you think that my husband doesn’t support the Black community. Yet my husband

¹⁵⁷ Huffington Post. (2010, June 28). ‘*We speak English*’ ad” *Watch controversial Alabama governor’s race advertisement*. https://www.huffpost.com/entry/we-speak-english-adwatch_n_555928.

¹⁵⁸ *United States v. McGregor*, 824 F.Supp.2d 1339, 1345 (M.D. Ala. 2011).

¹⁵⁹ McCalmont, Lucy, *Brooks: Dems wage ‘war on whites’*, Politico (Aug. 4, 2014), available at <https://www.politico.com/story/2014/08/mo-brooks-war-on-whites-109703>.

appointed the very first Black marshal to the Alabama Supreme Court, Mr. Willie James. When he first took office as the chief justice many years ago, he brought with him three people from Etowah County. Two were Black, and one of them is here tonight.” Although the statement is not racist, it is meant to appeal to Black voters by demonstrating that Moore has association with a few Black individuals.¹⁶⁰

138. In 2018, Kay Ivey made the preservation of confederate monuments a centerpiece of her gubernatorial campaign,¹⁶¹ to which Black leaders in the community loudly protested.¹⁶²

139. In 2020, “Bradley Byrne who was running in Alabama for US Senate drew national attention when he aired a Television ad that featured the faces of prominent minorities burning in a fire. The faces include those of Rep. Ilhan Omar, then NFL quarterback Colin Kaepernick, then the complete Squad: Reps. Omar,

¹⁶⁰ Campaign Legal Center (n.d.). Race in our politics: A catalog of campaign materials. <https://campaignlegal.org/race-our-politics-catalog-campaign-materials>.

¹⁶¹ Moench, Mallory (2018, April 17). *Gov. Ivey campaign ad praises Confederate monument law*, Associated Press News, (April 17, 2018), <https://apnews.com/article/6758488e013b4650813840e105b61ae4>.

¹⁶² Andone, Dakin. (2018, April 21) *NAACP slams Alabama governor’s campaign ad about law protecting Confederate monuments*, CNN. <https://www.cnn.com/2018/04/21/us/alabamconfederate-monuments-kay-ivey-campaign/index.html>.

Alexandria Ocasio-Cortez, Ayanna Pressley and Rashida Talth.”¹⁶³

140. Also in 2020, Jeff Sessions, then a Republican party primary candidate for the U.S. Senate, ran an ad warning that “socialism, open borders, free healthcare for illegal immigrants, that is the Democrats’ plan for America.”¹⁶⁴ “During the same election, State Rep. Arnold Mooney, released an ad warning that “our southern border is on fire. Illegal aliens swarm, opioids flow, Americans die,” over images of heavily tattooed MS-13 gang members. The ad cuts to Mooney, who says he wants to “cut legal immigration. That’s right, I said legal immigration. We can either put America first or we can keep emptying out Central America.”¹⁶⁵

¹⁶³ Whitmore, K. (2020, January 9). Byrne, baby, Byrne: Alabama candidate’s racist ad stokes and old fire. *Alabama.com*. <https://www.al.com/news/2020/01/byrne-baby-byrne-alabamacandidate-for-senates-racist-ad-stokes-an-old-fire.html>; Moon, J. (2020, March 2). Opinion: Are Alabama voters really as hateful and shallow and scared as the GOP senate field things? *Alabama Political Reporter*. <https://www.al.com/news/2020/01/byrne-baby-byrne-alabama-candidate-for-senates-racist-ad-stokes-an-old-fire.html>; Pitofsky, M. (2020, January 7). GOP rep releases campaign ad ripping Kapernick, ‘the squad.’ *The Hill*. <https://thehill.com/blogs/blogbriefing-room/news/477092-gop-rep-releases-campaign-ad-ripping-kaepernick-the-squad>.

¹⁶⁴ Sessions, J. (2020, January 16). Won’t back down [Video]. YouTube. <https://www.youtube.com/watch?v=BbVIHfIOCAvc&t=30s>.

¹⁶⁵ Mooney, A. (2019, October 18). Border on fire [Video]. YouTube. <https://www.youtube.com/watch?v=r-xbHIcbOzE&t=6s>.

**Senate Factor 7: Underrepresentation
of Black Alabamians in electoral office.**

141. During Reconstruction and prior to the adoption of the 1901 constitution, Black Alabamians experienced some representation in the State Legislature. In 1868, there was one Black man elected to the Alabama senate and 30 in the Alabama House of Representatives. While the number of Black members of the Alabama House of Representatives remained stable until 1876, there were increases in the Alabama Senate. In 1874, there were six Black members in the Alabama Senate.

142. These electoral and representative victories, however, were short-lived. By 1876, there were no Black members of the Alabama Senate and the number of Black members of the Alabama House of Representatives decreased to ten in 1876, and then to two in 1878.¹⁶⁶

143. In addition to the disenfranchising effect of the policies enacted after Reconstruction discussed at length above, the decline and lack of Black representation in the Alabama Legislature during this period can also be understood by considering that no redistricting was conducted in the state between the adoption of the 1901 constitution until the 1960s. While the disenfranchising 1901 Alabama Constitution called for the

¹⁶⁶ Alabama Archives. (1997). African American legislators in reconstruction Alabama. [https://archives.alabama.gov/afro/African American%20Legislators%20in%20Reconstruction%20Alabama 1867.pdf](https://archives.alabama.gov/afro/African%20American%20Legislators%20in%20Reconstruction%20Alabama%201867.pdf).

Legislature to redistrict after every decennial census, this mandate was ignored. As a result, the original 1901 House and Senate boundaries were still in place even after publication of the 1960 Census.

144. It was not until 1970 when, following federal intervention, two Black candidates were finally elected to the Alabama Legislature, the first since Reconstruction. In the first election following the 1980 Census, seventeen Blacks were elected to the House and three to the Senate.¹⁶⁷ The election of Black Americans to seats in the Alabama Legislature during this time was the direct result of the creation of majority-minority districts. In both chambers, the change to single member districts created new opportunities for Black Alabamians to elect Black candidates. Following the passage of the VRA in 1965, the Alabama Senate grew from zero Black state senators to five by 1985. While the House of Representatives had no Black members in 1965, by 1985 it had 19.¹⁶⁸ These Black candidates were elected by majority-minority districts; none came from predominantly white districts.¹⁶⁹

145. Due to white bloc voting against Black candidates, only two Black candidates have been elected to statewide office in the entire history of Alabama (Oscar Adams and Ralph Cook), both to the Alabama Supreme

¹⁶⁷ Blacksher, *supra* n.15.

¹⁶⁸ Grofman, B., & Handley, L. (1991). The impact of the Voting Rights Act on black representation in southern state legislatures. *Legislative Studies Quarterly*, 16(1), 111-128. <https://doi.org/10.2307/439970>.

¹⁶⁹ *Id.*

Court after an initial gubernatorial appointment.¹⁷⁰ No Black person has been elected to statewide office in Alabama since 1996.

146. No current statewide official in Alabama is Black. There are currently 27 Black members of the Alabama House of Representatives and seven Black members of the Alabama Senate. But for one Black representative, all of these Black legislators are elected in majority-Black districts.

147. Since Reconstruction, just three Black candidates have been elected to the U.S. House of Representatives from Alabama, all of which were elected by the state's sole majority-Black district.

148. No Black candidate has ever been elected Governor, Lieutenant Governor, U.S. Senator, Secretary of State, or State Auditor in Alabama.¹⁷¹

149. Even though Black people comprise approximately 27% of Alabama's population, only one of seven or approximately 14 percent of Alabama's congressional representatives is Black. This number of majority-Black congressional districts has remained constant since 1992, the first time in the Twentieth Century that a Black candidate was elected to Congress.

¹⁷⁰ Blacksher, *supra* n.15.

¹⁷¹ Associated Press (2016, Sept. 3). *There are 10 states where only white candidates have won statewide office*, (The Guardian). The <https://www.theguardian.com/us-news/2016/sep/03/missouri-10-states-only-white-candidates-get-elected>.

Senate Factor 8: Lack of responsiveness of Alabama officials to the particularized needs of Black Alabamians.

150. There are various areas where Alabama has had the opportunity, but failed, to act in a way that would have substantially benefitted the lives of Black Alabamians. Two examples are (1) the expansion of Medicaid and (2) felony disenfranchisement. Alabama's action (and inaction) in these two areas exacerbate the existing disparities between Black and white Alabamians and hinder Black Alabamians' political participation.

A. Expansion of Medicaid

151. The Affordable Care Act gives Alabama, like all other states, the opportunity to expand access to Medicaid by providing Medicaid to individuals whose income is 138 percent of the federal poverty rate.¹⁷² 38 states and the District of Columbia have opted to expand Medicaid. Alabama is one of the 12 states have opted to not expand Medicaid.¹⁷³

152. A 2013 analysis that focused on the expansion of Medicaid found that there were more than 300,000

¹⁷² Healthcare.gov (n.d.) Medicaid expansion and what it means for you. <https://www.healthcare.gov/medicaid-chip/medicaid-expansion-and-you/>.

¹⁷³ Kaiser Family Foundation. (2021). Status of Medicaid expansion decision: Interactive map. <https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/>.

JA426

low-income, uninsured adults in Alabama who would benefit from Medicaid expansion. Thirty-six percent of this population—more than 108,000 people—are Black. The analysis found that uninsured, low-income, Black Alabamians were more likely to report not

* * *

