

**In The
Supreme Court of the United States**

ALABAMA LEGISLATIVE BLACK CAUCUS, *et al.*,

Appellants,

v.

ALABAMA, *et al.*,

Appellees.

ALABAMA DEMOCRATIC CONFERENCE, *et al.*,

Appellants,

v.

ALABAMA, *et al.*,

Appellees.

**On Appeal From The United States District
Court For The Middle District Of Alabama**

JOINT APPENDIX

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**Appeal Docketed, No. 13-895, January 23, 2014
Appeal Docketed, No. 13-1138, March 14, 2014
Probable Jurisdiction Noted, June 2, 2014**

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The following opinions and judgments have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the Jurisdictional Statement, *Alabama Legislative Black Caucus, et al., v. Alabama*, 13-895, filed January 23, 2014

APPENDIX

<i>Alabama Legislative Black Caucus v. Alabama</i> , ___ F. Supp.3d ___, 2012 WL 6706665 (M.D. Ala., Dec. 26, 2012)	App. 437
<i>Alabama Legislative Black Caucus v. Alabama</i> , ___ F. Supp.3d ___, 2013 WL 1397139 (M.D. Ala., Apr. 5, 2013).....	App. 408
<i>Alabama Legislative Black Caucus v. Alabama</i> , ___ F. Supp.3d ___, 2013 WL 1397139 (M.D. Ala., Apr. 5, 2013) (Thompson, J., con- curring).....	App. 427
<i>Alabama Legislative Black Caucus v. Alabama</i> , ___ F. Supp.3d ___, 2013 WL 3976626 (M.D. Ala., Aug. 2, 2013) (majority opinion)	App. 278
<i>Alabama Legislative Black Caucus v. Alabama</i> , ___ F. Supp.3d ___, 2013 WL 4102154 (M.D. Ala., Aug. 2, 2013) (Thompson, J., concurring in part and dissenting in part)	App. 340
<i>Alabama Legislative Black Caucus v. Alabama</i> , ___ F. Supp.3d ___, 2013 WL 6726625 (M.D. Ala., Dec. 20, 2013) (majority opinion).....	App. 1

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<i>Alabama Legislative Black Caucus v. Alabama</i> , ___ F. Supp.3d ___, 2013 WL 6726625 (M.D. Ala., Dec. 20, 2013) (Thompson, J., dissent- ing).....	App. 188
<i>Alabama Legislative Black Caucus v. Alabama</i> , Case Nos. 2:12-CV-691 and 2:12-CV-1081 (M.D. Ala., Dec. 20, 2013) (final judgment).....	App. 276

**RELEVANT DOCKET ENTRIES
FOR THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION**

Date Filed No. Docket Text

- 08/10/2012 1 COMPLAINT; THREE-JUDGE COURT REQUESTED against Beth Chapman, The State of Alabama (Filing fee \$ 350.00 receipt number 4602023799.), filed by Albert F. Turner, Jr, Rhondel Rhone, Alabama Association of Black County Officials, George Bowman, Alabama Legislative Black Caucus, Fred Armstead, Jiles Williams, Jr, Bobby Singleton. (Attachments)
- 08/27/2012 7 First MOTION for Partial Summary Judgment by Alabama Association of Black County Officials, Alabama Legislative Black Caucus et al. (Attachments)
- 8/27/2012 8 BRIEF/MEMORANDUM in Support of 7 Motion for Partial Summary Judgment filed by Alabama Association of Black County Officials, Alabama Legislative Black Caucus, Fred Armstead, George Bowman, Rhondel Rhone, Bobby Singleton, Albert F. Turner, Jr., Jiles Williams, Jr.
- 08/31/2012 14 MOTION to Dismiss or, in the Alternative, Motion to Stay by Beth Chapman, The State of Alabama

- 09/13/2012 24 DESIGNATION OF THREE-JUDGE COURT [42 U.S.C. 1973c and 28 U.S.C. 22284]
- 09/19/2012 25 ORDER: Before the three-judge court is a 14 Motion to Dismiss or, in the Alternative, to Stay, filed by Defendant State of Alabama and Beth Chapman in her official capacity. Upon careful consideration of the motion, response, reply, and surreply (Docs.14, 15, 20, 23), as well as the supporting and opposing authority, it is ORDERED that the motion to stay is GRANTED until further order of the three-judge court. Plaintiffs and Defendants are DIRECTED to file a joint report on or before 10/31/2012, concerning the status of the declaratory judgment action in Alabama v. Holder, No.1:12-CV-1232 (D .D C .July 26, 2012), and the preclearance submission pending before the Attorney General of the United States.
- 10/10/2012 27 ORDER re 26 Joint Status Report. The parties have informed the court that the Attorney General of Alabama has been notified that the Attorney General of the United States does not interpose any objection to the House and Senate redistricting plans in Alabama Acts Nos. 2012-602 and 2012-603. The parties also have informed the court that the State of Alabama has filed a notice of

voluntary dismissal in Alabama v. Holder, No. 1:12-CV-1232 (D.D.C. July 26, 2012). Based upon the joint status report and the agreement of the parties, it is ORDERED that the stay imposed on 9/19/20 12 (Doc.25) is LIFTED and that Defendants shall file an Answer to the Complaint and a Response to Plaintiffs' 7 Motion for Partial Summary Judgment and for Preliminary Injunction on or before 10/26/2012. Plaintiffs may file a reply to Defendants' response on or before 11/2/2012. It is further ORDERED that Defendants' 14 MOTION to Dismiss, filed pursuant to Rule 12(b)(1) of the FRCP, is DENIED as moot

- 10/26/2012 28 ANSWER to 1 Complaint,, by Beth Chapman, The State of Alabama
- 10/26/2012 29 MOTION for Judgment on the Pleadings by Beth Chapman, The State of Alabama
- 10/26/2012 30 CONSOLIDATED MEMORANDUM in Support of 29 Motion for Judgment on the Pleadings and in OPPOSITION to Plaintiff's 7 Motion for Partial Summary Judgment, and 8 Brief in Support, and for Preliminary Injunction[RESPONSE to Dockets #7 & 8 – SUPPORTING #29] filed by Beth Chapman, The State of Alabama. (Attachments)

- 11/02/2012 32 REPLY BRIEF Supporting 7 MOTION for Partial Summary Judgment and MOTION for Preliminary Injunction and MOTION for Permanent Injunction, filed by Alabama Association of Black County Officials, Alabama Legislative Black Caucus, Fred Armstead, George Bowman, Rhondel Rhone, Bobby Singleton, Albert F. Turner, Jr, Jiles Williams, Jr.
- 11/14/2012 35 RESPONSE in Opposition re 29 MOTION for Judgment on the Pleadings filed by Alabama Association of Black County Officials, Alabama Legislative Black Caucus, Fred Armstead, George Bowman, Rhondel Rhone, Bobby Singleton, Albert F. Turner, Jr, Jiles Williams, Jr. (Attachments)
- 11/26/2012 39 REPLY to Plaintiffs' 35 Response to 29 Motion for Judgment on the Pleadings filed by Beth Chapman, The State of Alabama.
- 12/13/2012 1 COMPLAINT; THREE-JUDGE COURT REQUESTED against State of Alabama, Robert J. Bentley, in his official capacity as the Governor of the State of Alabama, and Beth Chapman, in her official capacity as the Alabama Secretary of State (Filing fee \$ 350.00 receipt number 4602025244), filed by Demetrius Newton, Alabama Democratic Conference, Framon Weaver, Sr., Stacey

Stallworth, Rosa Toussaint and Lynn
Pettway (Attachments)

- 12/18/2012 12 ORDER regarding DESIGNATION
OF THREE-JUDGE COURT [42
U.S.C. 1973c and 28 U.S.C. 22284]
- 12/19/2012 42 ORDER directing that, pursuant to
Rule 42(a)(2) of the FRCP, the three
judge court finds that these actions
involve common questions of law and
fact and that consolidation would
eliminate unnecessary repetition and
confusion; accordingly, it is OR-
DERED that civil actions 2:12-CV-
691 and 2:12-CV-1081 are CONSOL-
IDATED before the three-judge court;
further ORDERED that the lead case
shall be 2:12-CV-691 and that all
pleadings, motions, briefs, orders,
and other documents shall be filed
only in 2:12-CV-691
- 12/26/2012 53 MEMORANDUM OPINION AND
ORDER directing that the 7 motion
by the Black Caucus for partial
summary judgment and for prelimi-
nary and permanent injunction as
to count one of its complaint is DE-
NIED; the 29 motion by the State
defendants for judgment on the
pleadings as to count one of the
complaint filed by the Black Caucus
is GRANTED; the 29 motion by the
State defendants for judgment on
the pleadings as to count two of that
complaint is DENIED; count three of

that complaint is DISMISSED WITHOUT PREJUDICE; We GRANT the Black Caucus leave to amend its complaint within 21 days from the date of this order; the 29 motion by the State defendants for judgment on the pleadings as to count three of that complaint is DENIED AS MOOT; as further set out.

- 01/09/2013 59 ANSWER to Complaint [ANSWER TO COMPLAINT OF NEWTON PLAINTIFFS] by Robert J. Bentley, Beth Chapman, The State of Alabama
- 01/15/2013 60 AMENDED COMPLAINT against All Defendants, filed by Albert F. Turner, Jr, Rhondel Rhone, Alabama Association of Black County Officials, George Bowman, Alabama Legislative Black Caucus, Fred Armstead, Jiles Williams, Jr, Bobby Singleton. (Attachments)
- 01/25/2013 61 ANSWER to 60 Amended Complaint, by Beth Chapman, The State of Alabama
- 01/25/2013 62 MOTION to Certify Class ["Motion for Class Certification Scheduling Conference" by Beth Chapman, The State of Alabama
- 01/29/2013 63 ORDER LIFTING STAY AND DIRECTING PARTIES TO HOLE [sic] A RULE 26(f) CONFERENCE
- 02/06/2013 66 Second MOTION for Partial Summary Judgment by Alabama Association of Black County Officials, Alabama Legislative Black Caucus, Fred Armstead,

George Bowman, Rhondel Rhone,
Bobby Singleton, Albert F. Turner, Jr,
Jiles Williams, Jr. (Attachments)

- 02/06/2013 67 BRIEF/MEMORANDUM in Support
re 66 Second MOTION for Partial
Summary Judgment filed by Alabama
Association of Black County Officials,
Alabama Legislative Black Caucus,
Fred Armstead, George Bowman,
Rhondel Rhone, Bobby Singleton,
Albert F. Turner, Jr, Jiles Williams, Jr.
- 02/28/2013 76 RESPONSE in Opposition re 66
Second MOTION for Partial
Summary Judgment filed by
Beth Chapman, The State of
Alabama. (Attachments)
- 03/04/2013 77 REPLY BRIEF re 66 Second MO-
TION for Partial Summary Judg-
ment filed by Alabama Association
of Black County Officials, Alabama
Legislative Black Caucus, Fred
Armstead, George Bowman, Rhondel
Rhone, Bobby Singleton, Albert F.
Turner, Jr, Jiles Williams, Jr.
- 03/13/2013 82 MOTION to Intervene by Gerald
Dial, Jim McClendon.(Attachments)
- 03/25/2013 88 BRIEF/MEMORANDUM in Support
supplemental authorities filed by
Alabama Association of Black County
Officials, Alabama Legislative Black
Caucus, Fred Armstead, George
Bowman, Rhondel Rhone, Bobby
Singleton, Albert F. Turner, Jr, Jiles
Williams, Jr. (Attachments)

- 03/27/2013 90 ORDER granting 82 Motion to Intervene; Senator Dial and Representative McClendon are permitted to intervene as defendants
- 03/27/2013 91 Intervenors' ANSWER to 60 Amended Complaint, by Gerald Dial, Jim McClendon
- 03/27/2013 20 Intervenors' ANSWER to 1 [Newton] Complaint, by Gerald Dial, Jim McClendon
- 03/27/2013 93 MOTION to Alter or Amend 89 Order Denying Plaintiffs' 66 Second Motion for Partial Summary Judgment by Alabama Association of Black County Officials, Alabama Legislative Black Caucus et al.
- 03/28/2013 94 ORDER GRANTING MOTION FOR CLASS CERTIFICATION: ORDERED that the ALBC Plfs' 69 Motion for Certification of a Class Action is GRANTED and the following subclasses are CERTIFIED pursuant to Rule 23(a) and (b)(2), as further set out in order; further ORDERED that attorneys James Uriah Blacksher, Esq., U.W. Clemon, Esq., and Wilson Edward Still, Esq., are DESIGNATED as class counsel; further ORDERED that the named Plfs in the ALBC action the Alabama Legislative Black Caucus, Bobby Singleton, Alabama Association of Black County Officials, Fred

Armstead, George Bowman, Rhondel Rhone, Albert F. Turner, Jr., and Jiles Williams, Jr. are DESIGNATED as representatives of the Rule 23(b)(2) subclasses; further ORDERED that the Newton Plfs may appear, participate, and present claims individually in this consolidated litigation, as further set out in order

- 04/03/2013 95 MOTION for Partial Summary Judgment [MOTION FOR PARTIAL SUMMARY JUDGMENT WITH RESPECT TO THE ALBC PLAINTIFFS RESTATED PARTISAN GERRYMANDERING CLAIM] by Beth Chapman, The State of Alabama
- 04/03/2013 96 BRIEF/MEMORANDUM in Support re 95 MOTION for Partial Summary Judgment [MOTION FOR PARTIAL SUMMARY JUDGMENT WITH RESPECT TO THE ALBC PLAINTIFFS RESTATED PARTISAN GERRYMANDERING CLAIM] filed by Beth Chapman, The State of Alabama. (Attachments)
- 04/04/2013 97 MOTION to Amend/Correct 96 BRIEF/MEMORANDUM in Support, by Beth Chapman, The State of Alabama.
- 04/04/2013 98 AMENDED Memorandum in Support of 95 Motion for Partial Summary Judgment, filed by Beth Chapman, The State of Alabama. Amending 96 Memorandum in Support. (Attachments)

- 04/05/2013 101 MEMORANDUM OPINION AND ORDER: We DENY the 93 Motion to alter or amend our judgment. We sua sponte VACATE our initial 89 order denying the 66 second motion for partial summary judgment and SUBSTITUTE this memorandum opinion and order. We DENY the 66 second motion for a partial summary judgment for the reasons stated in the opinion and order
- 04/05/2013 102 THOMPSON, District Judge, concurring with 101 Memorandum Opinion and Order
- 04/17/2013 106 RESPONSE in Opposition re 95 MOTION for Partial Summary Judgment [MOTION FOR PARTIAL SUMMARY JUDGMENT WITH RESPECT TO THE ALBC PLAINTIFFS RESTATED PARTISAN GERRYMANDERING CLAIM] and brief supporting ALBC plaintiffs' motion to reconsider denial of their second motion for partial summary judgment and motion for entry of a permanent injunction filed by Alabama Association of Black County Officials, Alabama Legislative Black Caucus, Fred Armstead, George Bowman, Rhondel Rhone, Bobby Singleton, Albert F. Turner, Jr, Jiles Williams, Jr.
- 04/17/2013 107 MOTION for Reconsideration of denial of plaintiffs' second motion for

partial summary judgment by
Alabama Association of Black
County Officials, Alabama
Legislative Black Caucus et al.

- 04/17/2013 108 MOTION for Permanent Injunction
by Alabama Association of Black
County Officials, Alabama
Legislative Black Caucus et al.
- 04/24/2013 109 REPLY to ALBC Plaintiffs' 106
Response to ALBC State Defendants'
95 Motion for Partial Summary
Judgment and Response in
Opposition to ALBC Plaintiffs' 107
MOTION for Reconsideration and
108 MOTION for Permanent
Injunction filed by Beth Chapman,
The State of Alabama.
- 05/06/2013 111 REPLY to Defendants' 109 Response
to Plaintiffs' 107 MOTION for Recon-
sideration of denial of plaintiffs'
second motion for partial summary
judgment, and 108 MOTION for
Permanent Injunction filed by
Alabama Association of Black
County Officials, Alabama
Legislative Black Caucus, Fred
Armstead, George Bowman, Rhondel
Rhone, Bobby Singleton, Albert F.
Turner, Jr, Jiles Williams, Jr.
- 06/17 2013 121 MOTION for Summary Judgment
with Respect to Remaining Claim of
the ALBC Plaintiffs of Race-Based
Vote Dilution and Isolation by Beth
Chapman, The State of Alabama

- 06/17/2013 123 MOTION for Summary Judgment with Respect to Newton Plaintiffs' Claims by Beth Chapman, The State of Alabama
- 06/17/2013 124 BRIEF/MEMORANDUM in Support re 123 MOTION for Summary Judgment filed by Robert J. Bentley, Beth Chapman, The State of Alabama. (Attachments)
- 06/17/2013 125 BRIEF/MEMORANDUM in Support re 121 MOTION for Summary Judgment filed by Beth Chapman, The State of Alabama. (Attachments)
- 06/28/2013 130 ORDER: We ORDER the parties to file simultaneous supplemental letter briefs by Tuesday, July 9, 2013, to address whether this claim under the Equal Protection Clause is ripe for review and whether the Black Caucus plaintiffs have standing to bring it. We invite both parties to submit any material evidence along with their letter briefs to help us resolve these questions.
- 07/01/2013 131 THOMPSON, District Judge, concurring, as further set out.
- 07/09/2013 132 REPLY BRIEF (Joint) filed by Beth Chapman, Gerald Dial, Jim McClendon, The State of Alabama pursuant to this Court's 130 Order and the concurring opinion of Judge Thompson of 7/1/2013 (No. 131). (Attachments)

- 07/09/2013 133 SUPPLEMENTAL BRIEF responding to 130 Order, 131 Order requesting supplemental briefs on ripeness and standing filed by Alabama Association of Black County Officials, Alabama Legislative Black Caucus, Fred Armstead, George Bowman, Rhondel Rhone, Bobby Singleton, Albert F. Turner, Jr., Jiles Williams, Jr.
- 07/10/2013 134 RESPONSE in Opposition re 121 MOTION for Summary Judgment re racial discrimination claims filed by Alabama Association of Black County Officials, Alabama Legislative Black Caucus, Fred Armstead, George Bowman, Rhondel Rhone, Bobby Singleton, Albert F. Turner, Jr., Jiles Williams, Jr. (Attachments)
- 07/10/2013 135 RESPONSE to Motion for Summary Judgment by Demetrius Newton, et al.
- 07/10/2013 136 BRIEF in support of RESPONSE to Motion for Summary Judgment by Demetrius Newton, et al.
- 07/10/2013 137 Evidentiary Submission re 136 BRIEF/MEMORANDUM in Support filed by Alabama Democratic Conference, Demetrius Newton, Lynn Pettway, Stacey Stallworth, Rosa Toussaint, Framon Weaver, Sr. (Attachments)
- 07/10/2013 138 Evidentiary Submission re 136 BRIEF/MEMORANDUM in Support filed by Alabama Democratic Conference, Demetrius Newton, Lynn

Pettway, Stacey Stallworth, Rosa
Toussaint, Framon Weaver, Sr.
(Attachments)

07/10/2013 139 Evidentiary Submission re 136
BRIEF/MEMORANDUM in Support
filed by Alabama Democratic Con-
ference, Demetrius Newton, Lynn
Pettway, Stacey Stallworth, Rosa
Toussaint, Framon Weaver, Sr.
(Attachments)

07/10/2013 140 Evidentiary Submission re 136
BRIEF/MEMORANDUM in Support
filed by Alabama Democratic Con-
ference, Demetrius Newton, Lynn
Pettway, Stacey Stallworth, Rosa
Toussaint, Framon Weaver, Sr.
(Attachments)

07/10/2013 141 Evidentiary Submission re 136
BRIEF/MEMORANDUM in Support
filed by Alabama Democratic Con-
ference, Demetrius Newton, Lynn
Pettway, Stacey Stallworth, Rosa
Toussaint, Framon Weaver, Sr.
(Attachments)

07/10/2013 142 Evidentiary Submission re 136
BRIEF/MEMORANDUM in Support
Corrected Exhibit EE filed by
Alabama Democratic Conference,
Demetrius Newton, Lynn Pettway,
Stacey Stallworth, Rosa Toussaint,
Framon Weaver, Sr. (Attachments)

07/16/2013 153 ORDER ON PRETRIAL HEARING

- 07/17/2013 154 REPLY BRIEF (Consolidated) to the 134 Response to the 121 Motion for Summary Judgement, filed by Beth Chapman, Gerald Dial, Jim McClendon, and The State of Alabama. (Attachments)
- 07/17/2013 155 REPLY BRIEF (Consolidated) re 135 Response to 123 Motion for Summary Judgement, filed by Robert J. Bentley, Beth Chapman, Gerald Dial, Jim McClendon, The State of Alabama. (Attachments)
- 07/22/2013 161 SECOND SUBMISSION of Supplemental Authorities in Support of Second Motion for Partial Summary Judgment by Alabama Association of Black County Officials, Alabama Legislative Black Caucus, Fred Armstead, George Bowman, Rhondel Rhone, Bobby Singleton, Albert F. Turner, Jr., Jiles Williams, Jr.
- 07/30/2013 165 ORDER ON PENDING MOTIONS re 95 Motion for Partial Summary Judgment; 107 Motion for Reconsideration; 108 Motion for Permanent Injunction; 121 Motion for Summary Judgment; and 123 Motion for Summary Judgment. For the reasons the court will explain in an opinion to follow, it is ORDERED that the ALBC Defendants motion for a partial summary judgment against the claim of partisan gerrymandering in count three of the ALBC Plaintiffs

amended complaint is GRANTED. The facial challenge under the Equal Protection Clause in count three of the ALBC Plaintiffs amended complaint is DISMISSED for lack of subject matter jurisdiction. The motion by the ALBC Plaintiffs for reconsideration of the courts order denying their motion for a partial summary judgment as to count three of their amended complaint is DENIED. The motion by the ALBC Plaintiffs for entry of a permanent injunction is DENIED as moot. Judge Thompson will file a separate opinion concurring in part and dissenting in part. It is further ORDERED that the ALBC and Newton Defendants motions for summary judgment are DENIED. After careful consideration of the briefs and evidence, the Defendants have failed to persuade the court that there are not genuine disputes as to material facts and that the Defendants are entitled to judgment as a matter of law

08/02/2013 174 MEMORANDUM OPINION AND ORDER: On consideration of the motions, reply, and response (Docs. 95, 106, 107, 108, 109) as well as supporting and opposing authority, it is ORDERED that the motion by the State defendants for a partial summary judgment as to the claim of partisan gerrymandering in count

three of the amended complaint filed by the Black Caucus plaintiffs is GRANTED. We DISMISS the facial challenge under the Equal Protection Clause in count three of the amended complaint filed by the Black Caucus plaintiffs for lack of subject matter jurisdiction. The motion by the Black Caucus plaintiffs for reconsideration of our order denying their motion for a partial summary judgment as to count three of their amended complaint is DENIED. The motion by the Black Caucus plaintiffs for entry of a permanent injunction is DENIED AS MOOT.

08/02/2013 175 THOMPSON, District Judge, concurring in part and dissenting in part with 174 MEMORANDUM OPINION AND ORDER.

08/06/2013 182 Corrected Joint Stipulations of Facts

08/12/2013 187 NOTICE OF APPEAL filed by Alabama Association of Black County Officials, Alabama Legislative Black Caucus, Fred Armstead, George Bowman, Rhondel Rhone, Bobby Singleton, Albert F. Turner, Jr., Jiles Williams, Jr. as to 165 Order entered 7/30/2013, and the 174 Memorandum Opinion and Order denying plaintiffs' motion for a permanent injunction entered on 8/2/2013.

08/13/2013 188 Amendment to Joint Stipulations of Facts

- 08/21/2013 194 ALBC Plaintiffs' Post-Trial Proposed Findings of Fact and Conclusions of Law
- 08/21/2013 195 NEWTON PLAINTIFFS' Notice of Filing and Proposed Findings of Fact and Conclusions of Law
- 08/21/2013 196 Proposed Findings of Fact and Conclusions of Law by Jim Bennett, Gerald Dial, Jim McClendon, The State of Alabama
- 12/20/2013 203 MEMORANDUM OPINION AND ORDER as further set out in the opinion and order.
- 12/20/2013 204 THOMPSON, District Judge, dissenting re 203 Memorandum Opinion and Order.
- 12/20/2013 205 FINAL JUDGMENT: In accordance with the prior proceedings, opinions, and orders of the court, it is the ORDER, JUDGMENT, and DECREE of the three-judge court that in (1) civil action 2:12-cv-691 judgment is entered in favor of Defendants the State of Alabama, the Secretary of State of Alabama, Gerald Dial, and Jim McClendon and against Plaintiffs Alabama Legislative Black Caucus [et al.] and (2) in civil action 2:12-cv-1081, judgment is entered in favor of Defendants the State of Alabama, the Secretary of State of Alabama, the Governor of Alabama, Gerald Dial, and Jim McClendon and

against Plaintiffs the Alabama Democratic Conference [et al.]. Costs are taxed against Plaintiffs in civil action 2:12-cv-691 and in civil action 2:12-cv-1081. The Clerk of the Court is DIRECTED to enter this document on the civil docket as a final judgment pursuant to Rule 58 of the Federal Rules of Civil [sic].

01/06/2014 207 NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES as to 205 Judgment by Alabama Association of Black County Officials, Alabama Legislative Black Caucus, Fred Armstead, George Bowman, Rhondel Rhone, Bobby Singleton, Albert F. Turner, Jr, Jiles Williams, Jr.

01/14/2014 210 NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES as to 205 Judgment, 203 Memorandum Opinion and Order, by Alabama Democratic Conference, Lynn Pettway, Stacey Stallworth, Rosa Toussaint, Framon Weaver, Sr.

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

ALABAMA LEGISLATIVE
BLACK CAUCUS; et al.,

Plaintiffs,

vs.

CASE NO.: 2:12-cv-691-
WKW-MHT-WHP

THE STATE OF ALABAMA,
et al.,

Defendants.

DEMETRIUS NEWTON,
et al.,

Plaintiffs,

vs.

CASE NO.: 2:12-CV-
1081-WKW-MHT-WHP

THE STATE OF ALABAMA,
et al.,

Defendants.

* * * * *

NON-JURY TRIAL – VOLUME I

* * * * *

* * *

[1-24] GERALD DIAL

The witness, having first been duly sworn to
speak the truth, the whole truth and nothing but the
truth, testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

* * *

[1-26] Q. So one of your goals was to make redistricting this time more transparent than in the past.

A. Yes. In the past, even though I had been a majority member of the party who redistricted, I was never included and never consulted with, and I wound up with what I got was what I had. So I thought I would be in a position to include more legislators.

* * *

[1-27] Q. Let's look at those guidelines for a second. This is Exhibit C-1, which I'll – and I want to ask you. It says right up here on the first page, it talks about one person, one vote. [1-28] Was that an important consideration?

A. It certainly was. And we were concerned with that so that we could get a plan that would meet the Justice Department guidelines and so we – that's why we changed one portion of the guidelines, and we went to plus or minus 1 percent rather than 5.

Q. Were you also concerned that one person, one vote was necessary to avoid lawsuits after the plan was precleared?

A. Yes.

Q. And was it also an important goal to comply with the Voting Rights Act?

A. Absolutely. Yes, sir.

Q. And did that affect how you proceeded as you drew the plan?

A. Yes. That was one of my major goals in asking to be chairman. I wanted to see if we could not pass a plan that would meet the voting rights requirement, and that was one of our ultimate goals.

Q. I see down here at paragraph two where I have my finger that it talks about the necessity of avoiding retrogression. And how did you understand that as you drew the plan?

A. That we could not in any plan reduce the number of black votes in any district that had been determined to be a majority black district.

Q. Well, first, you wanted to create as many African American majority districts as possible; is that correct?

A. That's correct, but we also understood there were already [1-29] established numbers that had been established under the last redistricting plan, and we were committed not to regress those.

Q. Either in terms of number or in population.

A. Correct.

Q. And you understood that the population levels of the last plan had been precleared; is that correct?

A. That's correct.

Q. And had not suffered any Section 2 attack?

A. Correct.

Q. Was it also important – and I'm looking at the same exhibit on page 3 of 8 – to avoid contest between incumbents?

A. Yes. The commitment that we had made is not to put any two incumbents in the same district within the Senate plan.

Q. And also, to the extent possible, to protect communities of interest?

A. Yes, as much as possible.

* * *

[1-36] Q. And where did you start to draw the plan?

A. Started to draw the plan with the black districts, the minority districts in this case, because of meeting the requirements of the Voting Rights Act, realizing that our commitment was not to regress any of those districts. Each of those districts had to expand. Every minority district in this state had lost population and had to grow.

Q. And in addition to losing population, had those minority districts been systematically underpopulated in the 2001 plan?

A. Yes. And when we changed to plus or minus 1, it drastically required each one of them to gain a significant number of population. And I realized in that gaining of population, to keep from regressing the district and increasing that population, we had to increase it percentagewise on the same number of minority votes that we had. And so that created a problem, realizing the whole plan is like a domino. If you change one district, you effectively change the whole state. So I began by drawing the minority districts and worked from there out. And basically what we had left was basically filling in the blanks with what was left after we did the minority districts.

Q. So in other words, you began by finding enough people to [1-37] bring the minority districts back up to population within the plus or minus 1 standard?

A. That's correct.

Q. And that included bringing the African American populations of those districts up to approximately equal as best you could with what it had been in 2001?

A. Yes. And we were able to accomplish that almost 100 percent.

* * *

Q. Okay. And did Senator Hank Sanders attend that hearing?

A. Yes.

Q. Did he at that time give you any instructions about his district or about African American districts in general?

A. He did both. I had talked to Senator Sanders. He realized his district had to grow. And I had made a commitment to him and others that we would not put any two incumbents together. So he gave me some instructions on how he thought his district should grow. He also told me, and it's public record, that he felt like that the minority districts should be at a minimum 62 percent minorities.

* * *

[1-38] A. Well, basically, he said that I'll have to grow, and I would have to grow basically into Senator Keahey's district. He needed part of, basically, Choctaw and Marengo. He wanted to keep Lowndes, as I remember, in one county district.

And one of the things we were trying to do, he had a small sliver of Lowndes that allowed him to get into Autauga County, and he – basically, we wanted to get him out of Autauga [1-39] County. He wanted out, so he wanted to put Lowndes all into one county. I think he gave me about four or five suggestions. I was able to accomplish two or three of those.

Q. And did he also make a suggestion to you about what should happen to the African American members of Senator Keahey's district?

A. Well, basically, they would have to go into his district in order for his district to pick up the numbers he needed and to increase the population he had to have. He needed minorities to do that if we were going to keep the – not regress his district.

JUDGE THOMPSON: That's District 22?

MR. WALKER: That's –

THE WITNESS: Yes. That's correct.

MR. WALKER: District 22, yes, sir. Senator Keahey's district.

Q. Did you meet with other democratic senators; for example, the democratic senators from Birmingham?

A. Yes. I met with all the senators, and I met with Senator Smitherman, Senator Coleman, and Senator Dunn.

* * *

[1-40] Q. This is the actual exhibit. This is what Senator Smitherman actually brought to Senator Dial; is that correct?

A. That's correct, yes.

Q. And was he representing the Jefferson County Democratic senatorial delegation?

A. Yes. I had met and gone over with Senator Smitherman and Senator Dunn and Senator Coleman that their districts had to grow, but – again, populationwise. And this Jefferson County thing is very complex, so I asked them to – Senator Smitherman informed me that he had worked on a plan; that he had a plan that would meet the guidelines. I asked him to bring me that plan. He brought me this plan. He brought me the plan, and we [1-41] encompassed this plan into the Senate Dial 2. It's probably 99.9 percent what they brought us and what both – all three of those people agreed on.

* * *

[1-42] Q. Well, now, that's an interesting point. You couldn't please every senator, could you?

[1-43] A. I'm not sure I pleased any of them. I didn't please myself, so I'm not sure how many – but that's very difficult to do.

Q. But Republican and Democrat, people left your office from time to time unhappy.

A. Very unhappy. And our job was to get a plan, as I began to, that would meet Justice and do the best we can to reapportion one person, one vote.

Q. So throughout the drawing of this plan, you were balancing on one hand the requirements of meeting the law, the constitution, one person, one vote, the requirements of the Voting Rights Act and the guidelines, versus the individual wishes of Republican and Democratic senators. And you had to count votes in that process, didn't you?

A. Got to have enough to pass it, and I can't create an opportunity where I at least can't have enough votes for cloture.

* * *

[1-45] Q. Tell the Court about your efforts to work with Senator Keahey. As we've said, Senator Keahey is District 22, and he's a white Democrat; is that correct?

A. That's correct.

Q. And what was the issue with Senator Keahey?

A. Well, the problem with Senator Keahey's district is it goes back to Senator Sanders' district having to grow and having to grow in minorities. And when I moved Senator Sanders into – to pick up the minorities he needed, it pushed Senator Keahey south. Baldwin County had created some growth in that area, and there was too many people in Baldwin County, so it forced Senator Keahey down into the northern part of Baldwin County. So it changed his district pretty drastically.

* * *

[1-54] CROSS-EXAMINATION

BY MR. BLACKSHER:

* * *

[1-55] Q. Race was the factor that drove most of this entire Senate plan?

A. Trying to meet the voting rights requirements was the basis on which I drew the plan.

Q. And to be clear, the retrogression standard that you applied required not only that you maintain the 27 majority black House districts and the eight majority black Senate districts, but that you maintain the black majority percentage, the level, the size of the black majorities in those districts; is that correct?

A. Yes, sir. I concentrated my effort on the Senate districts and had very little input into the House plan.

* * *

[1-56] Q. In fact, you considered that as high – that the higher the size of the black majority, the better as far as the Voting Rights Act was concerned; is that right? You testified, didn't you, that you did not consider any black percentage too high?

A. On the plan that we adopted, that's correct.

* * *

Q. And you thought that the plus or minus 1 percent restriction of overall population deviation in every district was something that would help you get Section 5 preclearance in the Justice Department.

A. Correct.

Q. In fact, as you said in your affidavit, the first one you filed in this court, your objective was to construct guaranteed black safe districts, right?

A. Correct.

Q. You thought that would be a safe harbor under Section 5 of the Voting Rights Act?

A. I thought that would be the primary way that we could get this plan approved by Justice.

[1-57] Q. In fact, you said that when you were drawing this plan, you didn't consider partisan data at all. You were only focused on the racial data. Isn't that right?

A. What I was focusing on was not regressing the minority districts so we could get a plan approved by Justice Department.

Q. Okay.

* * *

[1-63] Q. So what you're saying, Senator, is that in pursuing your overriding goal of maintaining the large black majorities in the majority black districts, if that resulted in blacks being taken out of the majority white districts, diluting their influence in those majority white districts, that was just collateral damage? That was just an accident or the results you get because of pursuing the Voting Rights Act?

A. That was because of the Voting Rights Act.

Q. So we can blame the Voting Rights Act for the loss of black influence in the majority white districts?

A. Absolutely.

Q. Specifically, we can blame Section 5 of the Voting Rights Act, the preclearance requirement.

A. Preclearance.

Q. Yes.

A. Preclearance is what – that was our ultimate goal.

* * *

[1-67] Q. What instructions did you give Randy Hinaman?

A. What instructions? I gave him the – I told him to draw in the Smitherman Coleman Dunn plan. I told him that I would – I didn't want any two incumbents in the same district. And I wanted to, as we looked at the plan, how did we make and fill in the number of minorities to insure that we did not regress the [1-68] minority districts.

* * *

[1-69] Q. Okay. The instructions you gave Randy Hinaman were twofold. Isn't that correct? One, do not retrogress the majority black districts as per your standards.

A. Correct.

Q. And two, don't put two incumbent senators in the same district.

A. Correct.

* * *

[1-70] Q. * * *

So you testified that the necessity of making sure that the black majority percentages stayed as high as they appeared on the retrogression chart, that caused the districts, for example, Senate District 1 that goes all the way into Madison County, it affected Roger Bedford's district, which is Senate District 7.

[1-71] A. Correct.

* * *

[1-73] Q. Your first priority was population equality, right?

[1-74] A. Yes.

Q. Your second priority is Sections 2 and 5 of the Voting Rights Act, right?

A. Yes.

Q. Your third priority is, again, no district will be drawn in a manner that subordinates race-neutral districting criteria to considerations that stereotype voters on the basis of race, color, or membership in a language minority group.

That was your third priority, right?

A. Yes.

Q. Your fourth priority is contiguity and compactness. Right?

A. Correct.

Q. And the fifth priority was to follow the requirements prescribed by the Alabama Constitution.

A. Correct.

Q. And the sixth priority: The following redistricting policies contained in the Alabama Constitution shall be observed to the extent they do not violate or conflict with the requirements prescribed by the Constitution and laws of the United States.

And the first requirement under that is, each House and Senate district should be composed of as few counties as practicable.

And then your seventh requirement was traditions, customs, and usages, including contests between incumbents.

[1-75] So preserving county boundaries in your guidelines had a higher priority than protecting incumbents, didn't it?

A. And we said where practicable. And where it was practicable to do that, we did it.

* * *

Q. Okay. And what made it impractical to give county boundaries a lower priority than incumbent protection?

A. The Voting Rights Act and not regressing the minority districts.

* * *

[1-77] A. I'm sure – I recognize Senator Sanders, the bill he introduced, yeah. I'm not – I can't verify that that's it from my – my point of view, but he introduced a plan.

Q. That keeps Mobile County whole and takes care of the extra population in Baldwin County, doesn't it?

A. Yes, but it totally regressed the minority districts.

Q. And, in fact, your testimony in your deposition was that the only reason that you rejected the SB 5 plan was because it did not maintain the high black majority percentages, right?

A. Right.

Q. It had eight majority – voting age black majority districts, but it did not have the same high percentages. Right?

A. Right.

* * *

[1-78] CROSS-EXAMINATION

BY MR. TANNER:

* * *

[1-81] Q. The Justice Department guidelines that you reviewed do mention, however, the obligation to avoid fragmenting minority concentrations. Is that not correct?

A. * * * My goal was, based on what had happened in prior reapportionments, to not regress the minority districts in this state. All of them had to grow by population. And if they grew in population, they had to grow in the same percentage that they already have and not regress that district. * * * So that's my understanding of what we needed to do as far as meeting the guidelines of the Justice Department on not regressing minority districts.

* * *

[1-96] Q. * * *

Well, before we get into that. You've testified about how you were unwilling to lower the minority percentage in any district to avoid your view of what regressing was – retrogressing.

A. That's correct.

* * *

[1-124] A. But as I said earlier, if I had not had to contend with the Voting Rights Act, you could have seen quite a different map than you see today. But remember, that was the first priority, to make sure that we did not regress the minority districts. And as the minority districts grew, we would not regress the number of minorities in those districts. That was the plan which I began to work from, and I worked from that out.

* * *

[1-131] Q. Now, if you do the math, which I should have done on the chart, in redrawing these districts, you added 14,826 people to District 26; and of those 14,826 people, only 36 were white. And if you had not added a single black person to that district, if you had added those 14,826 people, if you could do it so every single one of them was white, the district still would have been over 64 percent black. And that would be plenty for Senator Ross to win reelection, wouldn't it?

A. That would have regressed the district, would it not?

Q. Would it have been – the answer is no. But it would have [1-132] been plenty for him to get reelected, wouldn't it? Do you have any doubt that Senator Ross would be able to get reelected in a district that's 64 percent black?

* * *

[1-135] Q. And you rejected – you testified you rejected Senator Sanders' plan because you understood that you couldn't lower the black percentage in any district.

A. That's correct.

* * *

[1-136] Q. So your testimony is that you really didn't look into the behavior of individual districts. Instead, you simply went by the black – the number of black people, the black percentage in the district,

and what you did was try and at least maintain that or increase it. Is that your – fair statement of your testimony?

A. That's fair, yes.

* * *

[1-137] A. My contention was that if we regressed the number of minority districts in population or in number, that we would not meet the guidelines of the Voting Rights Act, and ultimately the Court would probably draw the district lines in the state of Alabama like they're doing in other states.

Q. Why did you believe that the Justice Department would go contrary to the considered judgment of every black member of the Alabama Legislature? On what do you think they would base that [1-138] decision?

A. Based on what they had done in other states, in Florida and Texas and other states, and throwing out their plans and the courts stepping up and drawing plans for whatever reason. And our ultimate goal was to draw a plan that would be approved by the Justice Department, which I did. The Legislature approved and the Justice Department has approved this plan that we drew.

Q. On whose – who told you about this besides Senator Walker? Whose advice did you take as to finding this, what sounds like a bright-line standard, that whatever you got, you can't go under it from the

Justice Department? If it's a 99 percent black district, you can't go to 97? On whom – where did you get this?

A. Simply from my experience and in talking with our attorney, that we could not regress or we should not regress. If we wanted to pass a plan that would meet Justice Department, we could not regress the minority districts in number of districts and in the number of population within those districts.

Q. And it's your testimony that Mr. Walker told you that?

A. In our discussion, yes.

* * *

[1-139] REDIRECT EXAMINATION

BY MR. WALKER:

* * *

[1-146] Q. Are you claiming, sir, that Dial 2 is perfect?

A. No, sir.

Q. Are you claiming it's the only possible way to draw districts?

A. Oh, no, sir.

Q. Are you confident that the plan is fair in the way it draws districts of near equal size?

A. Yes.

Q. Are you confident that you did not have any intent to discriminate against anybody on the basis of race when you drew that plan?

A. Yes.

Q. Does it put all 35 senators elected in 2010 in separate districts instead of putting incumbents together?

A. Yes.

Q. Did it keep the same number of minority districts that you had before?

A. Yes.

Q. And it kept those districts about the same minority [1-147] proportions as they were before, right?

A. Yes.

* * *

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

ALABAMA LEGISLATIVE
BLACK CAUCUS; et al.,

Plaintiffs,

vs.

CASE NO.: 2:12-cv-691-
WKW-MHT-WHP

THE STATE OF ALABAMA,
et al.,

Defendants.

DEMETRIUS NEWTON,
et al.,

Plaintiffs,

vs

CASE NO.: 2:12-CV-
1081-WKW-MHT-WHP

THE STATE OF ALABAMA,
et al.,

Defendants.

* * * * *

NON-JURY TRIAL – VOLUME II

* * * * *

BEFORE THE HONORABLE WILLIAM H.
PRYOR, United States Circuit Judge, presiding, THE
HONORABLE MYRON H. THOMPSON, United
States District Judge, and THE HONORABLE W.
KEITH WATKINS, United States District Judge, * * *

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* * *

[2-6] RODGER SMITHERMAN

The witness, having first been duly sworn to speak the truth, the whole truth and nothing but the truth, testified as follows:

* * *

[2-36] CROSS-EXAMINATION

BY MR. WALKER:

* * *

[2-40] Q. Are you claiming that Senator Dial is a racist?

A. No. I'm not saying Senator Dial is racist at all. I knew Senator Dial before I even became a senator. Tell you the truth, he – I worked with him on drafting of the sports agent bill, and I was – I wasn't even a senator then. So I've known Senator Dial for a long time. No, not at all. I'm saying that the plan is racist. I'm not saying that Senator Dial is by no means.

Q. Well, are you saying that he drafted it for a racist purpose?

A. No. I think he drafted it so that the county would be controlled by the people in his party. And to do that, he had to disenfranchise the people in the county because the majority of the people who was placed in the plan, majority of their districts are outside of the county.

* * *

[2-66] WILLIAM S. COOPER

The witness, having previously been duly sworn to speak [2-67] the truth, the whole truth and nothing but the truth, further testified as follows

* * *

[2-109] CROSS-EXAMINATION

BY MR. PARK:

* * *

[2-122] Q. You talked about county splitting. Let me represent to you that in the 2012 House plan, Blount County is split into four House districts. Do you know whether Blount County is majority white or majority black?

A. I believe it's majority white.

Q. In fact, Blount County, according to the census, is 1.3 percent black. Do you think that the county splitting is because of race?

A. No. I think the county splitting in north Alabama, generally speaking, except with the exception perhaps of a Senate district that goes across Lauderdale and Limestone into Madison County, is maybe more politically motivated. I don't [2-123] know. I mean there's Blount County, and then I think it's Dekalb County that's split six ways. That's a majority white county with a significant Hispanic population, but I can't really imagine that the objective there was to split the vote of Latinos. So I don't know what all the motivations were in north Alabama.

Q. Let me tell you that all four of the representatives who have a piece of Blount County in the new plan are Republicans. Does that tell you it's not partisan, too?

A. I don't know. There could have been some sort of interparty squabble, or it could just be random. I don't know exactly what was in the map maker's mind, Mr. Hinaman, when he was doing this map. So you'll – you know, I'll just have to draw a blank on that. I don't know the motivation.

Q. So you just draw a blank rather than speculating?

A. Well, it's not appropriate to speculate, I guess.

Q. Let's look at Marshall County. Marshall County is split five ways. Again, Marshall County is 1.6 percent black. Is that because of race?

A. Apparently not.

Q. And, again, it's all Republicans. Do you think that's because of political party considerations?

A. It could be, but it's still not good redistricting practice.

* * *

[2-124] QUINTON ROSS

The witness, having first been duly sworn to speak the truth, the whole truth and nothing but the truth, testified as follows:

[2-125] DIRECT EXAMINATION

BY MR. TANNER.

* * *

[2-129] Q. And what is – what's the racial composition of that district?

A. According to the new plan, it's about 71 percent black.

Q. And is that higher or lower than it was under the old plan?

A. It's much higher.

Q. Now, your district was underpopulated. And I need to correct a misimpression that I left yesterday due to my failure to include charts. Your district was underpopulated by I believe 15,898 people?

A. Yes, sir.

Q. And if you added 16,000 white people, no black people, your district would have been more – little over 64 percent black. Would you have been comfortable in terms of the opportunities for the voters, black voters in your district in a district with a 64 percent black majority?

A. Yes, sir.

Q. How long would you be willing to go in terms of the black [2-130] percentage in your district and still feel comfortable?

A. Well, I like to believe I have good political standing, so 50, 55 percent. 50, 60 percent.

Q. And instead of 16,000 white people, they added 15,785 black people, including only 36 white people. How easy is it to find, outside your old district especially, an area with 15,785 people, of whom only 36 are white? Is that possible?

A. You have to make sure you look hard to find them.

Q. Now, would you like to have more white population in your district?

A. Sure.

Q. And if they did lower – you said you would feel comfortable with 55 or 60 percent. You've got 75 percent now.

A. Yes, sir.

* * *

[2-135] JUDGE THOMPSON: Let me ask you this, Senator Ross. Did your district lose any white areas?

[2-136] THE WITNESS: It lost, if I'm not mistaken, splits of the precinct. The precincts caused some whites to be shifted out.

BY MR. TANNER:

Q. Have you reviewed the precinct splits, Senator Ross, under the new plan?

A. Yes.

Q. And what do they have in common?

A. All of them basically, you know, shifted substantial number of blacks into my district but reducing the amount of whites that I had in there.

* * *

[2-152] REDIRECT EXAMINATION

BY MR. TANNER:

* * *

Q. Now, under the new plan, the district drawn by the Senate crosses the Southern Bypass, does it not?

A. Yes, sir.

Q. And it crosses it to take in black population?

A. Yes, sir.

Q. And it breaks up this natural dividing line –

A. Yes, sir.

Q. – to the effect of moving black population into your district?

A. Yes, sir.

* * *

[2-154] JOE L. REED

The witness, having first been duly sworn to speak the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

[2-155] BY MR. ANDERSON:

* * *

A. My name is Joe L. Reed. R-E-E-D. I live at 874 John Brown Avenue, Montgomery, Alabama 36106.

* * *

A. Yes. What's the Alabama Democratic conference?

Q. Yes, sir.

A. Alabama Democratic Conference is an organization, a [2-156] Democratic organization that was founded in 1960 for the purpose of advancing blacks politically in Alabama and to get influence in the political process. We participate in voter registration.

We participate in lobbying. We participate in begging. We participate in anything we can do to advance blacks in general and – Alabama in general and blacks in particular.

* * *

[2-157] Q. Why have you been involved and why has your organization been involved in these redistricting cases?

A. Well, in 1970 I ran for the Legislature from Perry, Marengo, and Sumter counties, and I didn't realize how the district lines were drawn. I ran and ran for that office all over the black belt, and I didn't realize those lines were drawn in such a way that I couldn't win. And so I lost that election. Maybe it was a blessing in disguise.

Then in 1975, Montgomery went from a commission form of government to a mayor council form of government. When the district lines were first drawn, there were two majority black districts and seven majority white districts. I thought that was unfair, and I set out to draw some lines myself, and that's when I first started drawing lines.

* * *

[2-158] But that's what really got me involved, when I realized that reapportionment plans can achieve whatever results the drafter wants them to achieve. There's no perfect reapportionment plan. A reapportionment plan depends on what the drafter wants to get, and he can draw them many, many,

many ways. So I started drawing them because that's the results I wanted when I drew a plan.

* * *

[2-159] Q. And at that time, did you have an opinion about what type of percentage of voters in a district would be needed in order – of people that were – that lived in a district, the population in the district, the percentage needed to be to assure an election of a black official?

A. For a long time, I labored under the theory that – and even in some instances maybe even applied today, but not as much as it did then – that you needed about 65 percent blacks to get a safe black seat. Once you counted the unregistered voters, once you counted the low turnout, once you counted those who were living but not even qualified to vote, all of those factors played into it. But I was talking about 65 percent. I'm talking about 65 percent for the population. But you put all the mix in, registered and unregistered, and those who are even unqualified – there are a lot of blacks who are just unqualified to vote in the sense that they have – may have prison records because of our criminal justice system. So all of that fed into my decision and my conclusion as to what it would take to have a safe black district. I have modified my position somewhat since that time.

[2-160] Q. And what is the reason that you – I've been going historically. You felt like 65 percent because of these other factors about who would actually vote?

A. Yes.

Q. But what's led you to modify your position from the 1970s?

A. We have registered more blacks. More blacks are registering. A few more whites have voted for blacks. A few more. All of those factors come into it. And we think that 60 percent – I mean 60 percent now is a safer – that's what – that's what I prefer.

Q. Your opinion today is around 60 percent?

A. Around 60 percent. Now, there may be – sometimes you can't get 60 percent. You have to take what you can get, take the hand that's dealt you, and go with it. Sometimes you don't have the people. So if you have 55 percent, okay. If you got 53 percent, okay. Take what you can get and go with it. But my overall goal would be a safe district now would be about 60 percent.

* * *

[2-164] Q. Going to drafting districts, which you've said you had some experience with. And you understand, from time to time the – the state constitution says that we're supposed to keep these legislative districts within county lines. You know with one man, one vote, that hasn't happened. You've drafted plans where you've crossed county lines.

A. Yes. We call those – and we started this, really, back in 1983, what we called, Jim, the county line plan, where I think Jim Blacksher was the first

one to call to my attention what the Alabama constitution said when we were drawing the plan. I drew that plan in 1983. And we called splits necessary splits and unnecessary splits. We split some counties then, but there was some unnecessary splits that we did not – some counties, we did not make with what we could possibly get around.

* * *

[2-165] Q. And some of those plans you split voting precincts also?

A. Yes. We split voting precincts because that's going to happen anyway.

* * *

[2-166] A. I went to the hearings. Sure I did. He said, you got three minutes. I said, take me three minutes to clear my throat. I said, I can't talk to you about a reapportionment plan in three minutes.

* * *

[2-168] Q. Yes, sir. And in this plan, for example, House District 73, which was the district I live in in Montgomery, represented by Joe Hubbard now, had been – in the plan that the Legislature passed was moved to Shelby County. You kept House District 73 in this plan, didn't you, in Montgomery?

A. Yes. We didn't try to change House District 73.

Again, you go back, a drafter can achieve a lot of things he wants to achieve. For example, if I had just

really set out to do it, I could have gotten another black district in Montgomery. I didn't do that. I told Joe Hubbard, I said, what we're going to do is this. We're going to – what we're going to do is this. We're going to keep all the districts, the Republicans and the Democrats, alike. I told Joe Hubbard, I said, we're going to reduce your numbers a little bit from 48 percent black down to maybe around 40 percent because, I said, you get too many, some black is going to run against you, and we [2-169] can't stop it. So I think we ought to have kind of a diverse Legislature, representatives in the Legislature. I do believe that. And Joe has been doing all right. And we got along with some others, too. So we didn't try to change Democrats or Republicans in the whole state. We left – that's why I called it the status quo.

* * *

[2-196] BERNARD SIMELTON

The witness, having first been duly sworn to speak the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. TANNER:

* * *

[2-205] Q. Let me move from the Latino population to another important population in Alabama. Does the NAACP and your local branches have any relationship with the Mowa Band of the Choctaw Nation down in south Alabama?

A. Right. We have worked with them on trying to get their federal recognition. As a matter of fact, in 2012 – let's see – I think it was 2011, we went to our national convention, and we were able to get a national resolution passed through our national organization in support of the federal recognition of the Mowa Choctaw Indians.

Q. And at the local level, to your knowledge, down in Washington County and Mobile County where the Mowa mainly live and in Escambia County where other native Americans live, is there a good, close, working relationship with the –

A. I can speak for the Baldwin County area and Washington County. Mobile County, I know they work real closely with the Vietnamese community there, but I know Baldwin County and Washington County work with the Mowa Indians.

* * *

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

ALABAMA LEGISLATIVE
BLACK CAUCUS; et al.,

Plaintiffs,

vs. CASE NO.: 2:12-cv-691-WKW-MHT-WHP

THE STATE OF ALABAMA, et al.,

Defendants.

DEMETRIUS NEWTON, et al.,

Plaintiffs,

vs CASE NO.: 2:12-CV-1081-WKW-MHT-WHP

THE STATE OF ALABAMA, et al.,

Defendants.

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NON-JURY TRIAL – VOLUME III

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BEFORE THE HONORABLE WILLIAM H.
PRYOR, United States Circuit Judge, presiding, THE
HONORABLE MYRON H. THOMPSON, United
States District Judge, and THE HONORABLE W.
KEITH WATKINS, United States District Judge, * * *

[3-2] APPEARANCES

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[3-49] THEODORE S. ARRINGTON

The witness, having been duly sworn to speak the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

* * *

Q. Okay. As a technical term – we’ve all heard gerrymander, but explain to the Court what you mean by the – that you thought the 2000 plan that was adopted by the Legislature was a [3-50] dummymander.

THE WITNESS: Your Honor, there’s such a thing as being too smart for your own good, and sometimes legislatures do things where they think it’s to their advantage, and they get greedy. And it turns out, after a while, that what they thought was to their advantage turns out to be to their disadvantage. And that’s sort of what a dummymander is.

JUDGE PRYOR: Is that like being hoisted on your own petard?

THE WITNESS: That’s correct, Your Honor.

And I had said in the deposition, and I still agree with this, that if the Republicans had come to me when the 2000 plan was being enacted, I would have been willing to be their expert witness to say that this is a bad plan. It has a number of bad features. One of them is it continues to pack the black districts. And I would have said that's something that shouldn't be done in 2000 and shouldn't be done in 2010.

Q. Why is packing bad and illegal?

A. Sure.

Packing restricts the black community to just those districts that are packed, so that, essentially, their ability to participate in the political process is limited. This is a state that's about 70 percent white. If you're restricted to just 25 to 30 percent of the districts in the Legislature, and you have no ability to form coalitions with whites, then your [3-51] ability to participate politically is restricted. It's not participating equally in the political process.

JUDGE PRYOR: Dr. Arrington, were you saying that the 2000 plan was packed?

THE WITNESS: Absolutely, Your Honor. In fact, the 1990 plan was packed. And Your Honor, the reason for that is that after the *Gingles* case, state legislatures understood that they had to create majority black districts. But we didn't know – and I include myself in that because I was drawing districts at that time – we didn't know what level of concentration was necessary to give minorities a reasonable opportunity

to elect candidates of their choice. Also, since that redistricting and since the 2000 redistricting, the ability of blacks especially to mobilize, to get registered and to actually get out and vote, has exploded. And the Chief Justice noted that when he declared Section 4 of the Voting Rights Act unconstitutional, that blacks are mobilized today at the same rate as whites. And if they're mobilized today at the same rate as whites, and you have a district that's just majority black by voting age population, and the cohesion of blacks tends to be 90 percent plus, and you're getting at least 20 percent of the whites to vote for them, that's plenty for them to have a reasonable opportunity to elect a candidate of their choice without restricting their ability to deal in the adjoining districts; to join with white Democrats and have a fighting [3-52] chance to win. Not a sure thing, but a fighting chance to win.

Q. You mentioned packing throughout your testimony. You also mentioned cracking. What do you mean when you say that they're cracking a district?

A. The process of gerrymandering is very simple. First you take the other guy's voters and pack them as much as you can. But you can't pack all of them into a few districts – some are left over – so you take the ones that are left over and you distribute them in the remaining districts in such a way as they're powerless there. So you pack and then you crack what's left over.

And you can see that in these plans, in the sense that in addition to the packing, they then took the remaining blacks and separated them so they were always less than about 35 percent of the population in any of the remaining districts. Which means that's small enough that blacks would not be able to say to white Democrats in such districts, hey, if we move together, we can win this district. But if you go to white – white officeholders, white voters and the like, and you say, coalesce with us and we can win this district, if that's not possible, then no such coalitions will ever be formed.

JUDGE WATKINS: Dr. Arrington, you said “these plans.”

THE WITNESS: The enacted plans.

JUDGE WATKINS: Are you talking about historical plans, the two prior ones, or are you just talking about the plans that [3-53] are at issue in this case?

THE WITNESS: All three of them.

JUDGE WATKINS: The 1990, the 2000, and the current one?

THE WITNESS: But Your Honor, here's the difference. In 2000 Democrats were getting 35, 40 percent of the white vote. And if you're getting 35 or 40 percent of the white vote, then you can pack the black districts to some extent, you can engage even in some cracking, and the white Democrats can still win. But if the Democrats are only getting 20 percent of

the white vote, then it becomes a very different game. And that's what really changed.

That's why the Democrats did what they did in 2000, and they thought they were being smart. But once things changed, especially after 2010, then what looked smart in 2001 and 2002 turns out to have been very bad; especially bad for blacks because it means it cuts them off from the ability to form those coalitions that they have to have if they're going to be players in Alabama politics.

* * *

[3-56] Q. You had some criticism in your direct, and they asked you this on your cross, about what I call the 2 percent rule, which is 1 percent variance each side, vis-a-vis the 5 percent rule that – in previous plans. Can both of these percentages be manipulated, and, compound question, is one easier to manipulate than the other?

A. Just on the face of it, just on the face of it, there's more room for manipulation, good or bad, in the 10 percent rule than in the 2 percent rule. That's not the way the 2 percent rule has been used here, I think. I think the 2 percent rule was used as a way of saying, once we've done that, once we've said we have to pack these black districts because we won't get [3-57] approval from the Department of Justice, and we have to stay within 2 percent, that allows them to draw a plan which, essentially, has no redeeming features at all. If you say you didn't follow county boundaries, well, you can't. If you say you have to

shift a district out of Birmingham, well, you have to do that.

It's what I call the devil-made-me-do-it approach. It gives them protection against any argument that the plan is deficient on any basis, either when presenting it to the public or when presenting it to the courts.

Here's the problem, the way I see it. The Legislature can adopt a 2 percent plan. That's not on its face unconstitutional. I understand that. But you have to ask the question of some kind of proportions. The advantage of a single-member district system is that you're representing people, but you're representing them in terms of the places where they live and identify with. The district has a meaning because the people who live there know what it is and the representative knows what he represents or what she represents.

If you go to 2 percent, then you essentially create districts where they're all about the same size, same population, but they have no meaning. You can't say, well, this is the central Birmingham district and this is the – this is the Dauphin Island tourist district. They're just collections of people. Which it's one person, one vote, all right, but it [3-58] lacks any meaning.

And once you – once you've freed Mr. Hinaman to draw a plan which has no meaning at all, he can pack and crack as much as he wants to, and it doesn't

matter, because everything he did, the devil made me do it.

* * *

[3-69] CROSS-EXAMINATION

BY MR. WALKER:

* * *

[3-77] Q. * * * [3-78] And then in your direct testimony, in paragraph 44, you say Dr. Brunell, who has not testified yet but who will, has opined that the concentration at which the opportunity to elect as president would not be the same everywhere in Alabama. You agree with him, but then you say a minimum can be set that would apply everywhere, which seems contradictory to me, so I wanted you to explain that, but not just yet.

A. No. That minimum is 50 plus one. The point is that based upon Dr. Lichtman's testimony – he'll testify later – my own examination of the academic literature on Alabama elections and miscellaneous other voting rights cases in this state, it's clear that 51 percent minority VAP –

Now, we're talking VAP, not pop, remember –

Q. Right.

A. Pop would be somewhat higher than that.

Q. I understand.

A. – is enough to give minority voters that opportunity anywhere in the state. Now, in some

places in the state, that's more than you need. But everywhere in the state, that's enough.

Q. Then why do you come down here and later say, certainly 54-56 – and I assume you mean VAP concentrations – is enough?

A. Yes. Well, all I'm saying is, okay, if you want to fight about 51, you don't think that's enough, certainly when you get to 54 or 56, there's no longer any reason for anybody to doubt [3-79] it.

Q. And that would be statewide, you're telling the Court, without any variation according to where you are in the state?

A. No. I'm only saying if you want to fight about 51, if you don't think that's quite enough, all right. Maybe you go to 54 or 56. But 51 is enough. And Dr. Lichtman's data shows that. And that's all I'm saying in saying, you know, in some places you're going to have difficulty finding whites to bring into those districts. So if it drifts up to 54 or 56, that may be what you need to do.

Q. Look at this sentence that I'm indicating right here: A minimum can be set which would apply everywhere. Everywhere in Alabama.

What is that minimum? Where do you see that minimum?

A. It's 51 percent.

Q. 51 percent?

A. Yes. Or 50 percent plus one person, if you want to look at it that way.

Q. Okay.

A. I mean there is law that suggests that it has to be that if you're going to count it as a minority district. And I say that in the report as well, that it may be that there is a legal standard that requires it to be majority minority in that sense. And that's – you know, that's the *Bartlett versus Strickland* case. So okay. So up it to that. But in some places in [3-80] Alabama, that's not what you need politically.

Q. And above that you would consider packing?

A. Above that considered packing? Again, you look at – if you can make it – if you can do that. If there are places in the back belt where you can't do that, then you might have to go a little bit above that. And that's understandable.

* * *

[3-87] ALLAN J. LICHTMAN

The witness, having been duly sworn to speak the truth, the whole truth and nothing but the truth, testified as follows:

* * *

[3-98] CROSS-EXAMINATION

[3-99] BY MR. DAVIS:

* * *

[3-107] Q. Here's the question, Dr. Lichtman. If you're using 46.5 or 53 percent voting age population –

A. Yes.

Q. – would you disagree, then, with Joe Reed, who said that in his view, you need about 60 percent?

A. For these districts, I would absolutely disagree, and I think the numbers more than bear that out.

Q. Would you disagree with black legislators who said they thought that they should have 65 percent or so?

[3-108] A. I've been redistricting advisor to a number of states, and my experience is no legislature – legislator ever thinks they're safe enough. They don't want to be 99 percent safe. They want to be 99.99999 percent safe. So I'm not –

Let me finish.

I'm not surprised if what you say is true, but that is not an analysis based on the evidence.

Q. You don't know –

JUDGE PRYOR: No. It is. It is based on the evidence –

THE WITNESS: Yeah, right.

JUDGE PRYOR: – isn't it?

THE WITNESS: Yes, for 99.999999 –

JUDGE PRYOR: You want a safe district.
That's the evidence, right?

THE WITNESS: Even then, sometimes
strange things happen.

BY MR. DAVIS:

Q. You don't know of any African American
legislators, then, who are saying that they want a
district that's in the mid forties or that they can win a
district that's in the mid forties?

A. I'll answer your question. I don't know what
any African American or non-African American
legislator has said about anything, because that's not
within the scope of my analysis.

* * *

[3-114] RANDY HINAMAN

The witness, having been duly sworn to speak
the truth, the whole truth and nothing but the truth,
testified as follows:

DIRECT EXAMINATION

[3-115] BY MR. PARK:

* * *

[3-116] the Legislature and precleared by Justice.

Q. And then in 2012, how did you get – after the 2010 census, how did you get involved with redistricting in Alabama?

A. Congressional?

Q. Yes, sir.

A. I was hired by the seven members of the Alabama congressional delegation to draw a map for them that we would share with the folks in Montgomery and work with the Legislature to get something similar to that adopted.

Q. And was that plan passed by the Legislature and signed by the governor?

A. With changes, yes, sir.

Q. And is that the plan that was used in the 2012 congressional [3-117] elections?

A. Yes, sir.

Q. And in 2012, you worked with the entire delegation?

A. Yes, sir. Six Republicans, one Democrat.

Q. And each of those plans was a statewide plan; is that right?

A. Yes, sir.

Q. And each of those plans, being congressional plans, was drawn with zero tolerance?

A. Zero deviation. Yes, sir.

Q. After doing the congressional plan, one question that has come up, did you have any involvement with the State Board of Education plan in Alabama?

A. I did not. I did not draw that plan.

Q. How did you come to be involved in working on the legislative plans for Alabama?

A. Well, after working on the congressional with Senator Dial and chairman – and also Representative McClendon, they talked to me and leadership talked to me about helping out with the legislative districts. Speaker talked to me about helping out as well.

Q. And what kind of schedule did you have?

A. I went to work, basically, September – early September of 2011, yeah, and then worked through the session, end of the session, May 2012.

Q. How did you get started?

[3-118] A. Got started, came down and did a meeting with leadership and Senator Dial and Representative McClendon and talked about some of the rules, the guidelines that were in place that the committee established, as well as some other procedural things that we talked about. And then I went back and started drawing – roughing out a map where I could come back and meet individually with members and fine tune it from there.

Q. Before you were in a position to show a map to anybody, what did you have to do mechanically?

A. Well, mechanically, I wanted to get some vote performance data in so I could look at the various – how districts would perform. So I had to apply election returns from the last eight or so general elections into the plan by precinct. Which obviously, is somewhat more complicated the further back you go, because precincts names change and so forth. So that took a while. And then I roughed out a plan where everything was basically within deviation so that somebody could look at their district in deviation and go from there.

Q. You mentioned some guidelines. What do you recall about the guidelines with respect to deviation?

A. Well, we were overall deviation of 2, plus or minus 1.

Q. And what with respect to any other guideline?

A. Well, the other guidelines were to follow the Voting Rights Act and to not retrogress the overall total number of African American majority districts, as well as to try individually to [3-119] not retrogress the individual districts from the numbers that existed in 2001.

Q. And by retrogress, did that mean that the percentage of total population couldn't come down?

A. I looked at – yeah. Essentially, I tried where possible to not lower the total population of African American population in those minority majority districts.

Q. And what was your reference point?

A. Reference point was 2010 census in 2001 districts.

Q. In the work you did loading information, did you have incumbent addresses?

A. I did have incumbent addresses. Unfortunately, a couple of them ended up either being their office address when it should have been their home address, and they needed to be sorted out at the very end. But, yes, sir, I did have incumbent addresses. And I was also instructed that we were not putting incumbents together to the extent we could avoid it.

* * *

[3-122] BY MR. PARK:

Q. Mr. Hinaman, when you started work on the Senate plan, which districts did you start with?

A. Well, I started with the majority African American districts [3-123] first. And then, obviously, after that, worked around the edges of the map and moved inward, for the most part.

Q. Which are the black majority districts in this plan?

A. In this plan, that would be 18, 19, and 20 in the Jefferson County area; 23 and 24 and 28 and 33 in Mobile.

Q. And also 26?

A. And 26 in Montgomery. Yes.

Q. And when you started work for all – what was the nature of the population status of these black majority districts?

A. They were all underpopulated in comparison to ideal, and I had to find population to repopulate them.

Q. And as a general matter, where would you find that population?

A. Well, obviously, it has to be contiguous, so it would be in a neighboring district by definition.

Q. Now, as you worked on – let's start with Senate District 23 and 24. Senate District 24 was underpopulated. What did you try to do with that?

A. Well, I believe I moved – took it down further into Choctaw and Clark, rural areas, and also took it – about half of Pickens County and put it in there. Probably a little bit more in the Tuscaloosa area, although the differences aren't – it's in more of an urban area, so it doesn't look that different, but it added a few precincts in there as well.

Q. Let me direct your attention to Senate District 30 at this [3-124] time. Senate District 30 includes Butler County, Crenshaw, Pike, and goes through Lowndes to Autauga and Elmore County; is that right?

A. That's correct.

Q. What did you do with Senate District 30?

A. I thought that that – a number of those districts were all underpopulated south of Montgomery, and I thought that what would make the most sense would be to draw a more compact District 30 north of Montgomery. So those areas, including Lowndes, that were south and west of Montgomery were put in other districts. The rest of Lowndes and Butler went in 23, Crenshaw went into 25, and Pike went into 31.

Q. Now, what happened when you pushed Senate District 24 north into Pickens County?

A. Obviously, that had the effect of also moving Senate District 21 north into Lamar.

Q. And in connection with that, was Senate District 5 underpopulated?

A. It was. And obviously, it couldn't very easily go directly east because of the three African American senate districts in Jefferson County, so it took up part of Fayette County or all of Fayette County.

Q. And when you take Lamar and Fayette County away from Senate District 6, what happens?

A. Well, it was obviously – considering started [3-125] underpopulated, and once you did that it was even further underpopulated. Again, about the only place it could go was north, so it went north into Senate District 1.

Q. What was the status of Senate District 2?

A. Senate District 2 was very much overpopulated. I think close to like 40,000 citizens. So 1 moved into 2, the northern part of 2.

Q. And you had to redistribute the population in 2 to meet the ideal population; is that right?

A. That's correct.

Q. So you moved 30 north of Montgomery, and you redistributed down here. When you moved Senate Districts 23 and 24 south into Choctaw and Clark counties, what happens to 22?

A. Well, obviously, it needs population, but that works out well because Senate District 32 in Baldwin County was very overpopulated. So basically, everything north of I-10 in Senate District 32 went into Senate District 22 in Baldwin County.

* * *

MR. PARK: The 2012 proposed map for the 2014 plan.

Q. Again, starting with Senate Districts 23 and 24.

A. Yeah. They picked up population – well, Senate District 2 went north into Pickens and picked up a few extra precincts in Tuscaloosa, and then it went south into the northern part of [3-126] Clark and a considerable amount of Choctaw.

Q. And 23?

A. And 23 picked up the rest of Lowndes, picked up Butler, and picked up a little bit more of Clark, I believe.

Q. And what happened to Crenshaw County?

A. Crenshaw went into Senate District 25, and Pike went into Senate District 31.

Q. And 30 went on north –

A. 30 went all north of Montgomery, which had the effect of pushing Senate District 11 further north as well.

Q. And then 21 moves north into Lamar County; is that right?

A. Yes, sir.

Q. And 5 moves west into Fayette County?

A. Yes, sir.

Q. What happened with Senate District 6?

A. Senate District 6 moved north into Lauderdale County –

Q. And Senate District 1 –

A. – and a portion of Lawrence.

Q. And then Senate District 1 moves along –

A. Moved east along the top of the map into Limestone and also into a little bit of – portion of Madison.

Q. Let's look at what's been marked as Exhibit 469. Can you tell me what this is.

A. That would be a blow-up of the senate districts that I was given by Senator Dial, who told me that Senator Smitherman had [3-127] given him that map of the three majority African American senate districts in Jefferson County.

Q. And did you try to put Senator Smitherman's map into the Senate plan?

A. I did. I think I – I mean percentages are hard to use, but I put, you know, 95, 97 percent of it into the Senate map.

Q. What part of the – of Senator Smitherman – did you change any of the internal boundaries in Senator Smitherman's map?

A. If I did, it was unintentional. I tried to follow those lines entirely. And I got no feedback that I was wrong, so I think I did those correctly as that map represents.

Q. And what changes did you make in Senator Smitherman's map?

A. The biggest visible change is these few precincts to your left sticking out this way were precincts that were in Senator Reed's Senate District, Senate District 5, I believe, and he wanted to keep those like two or three precincts. In exchange for that, obviously, I had to have equal population, put in

two or three precincts at the very southern tip of Jefferson County.

Q. And were those precincts the Rock Creek Church Road –

A. They were.

Q. – in this area and Rock Creek Church Road to what would be the west?

A. Yes, sir.

Q. And are those precincts majority white or majority black?

A. Majority white.

[3-128] Q. And the precincts to the south that you added to Senator Smitherman's district, are they majority white or black?

A. Majority white.

* * *

[3-130] Q. And then Senator Ross's district, did it keep the core of his old district?

A. It did. Although geographically that looks like a large area, which it is geographically, but populationwise, it's not that large. But, yes, he kept the bulk of his core district and then added some precincts in the city of Montgomery to get back to ideal population.

Q. Now, when you created the land bridge and took population from the south part of Montgomery

County, was that population white and black – white or black?

A. It was probably about 65 percent white.

Q. And in the course of repopulating Senator Ross's district, did you put white folks and black folks back in the district?

A. I did.

Q. And they came in from other parts of the new district; is that right?

A. Yes. Came in from other parts of 25 in the city.

Q. Let's go to tab eight. And what I'll represent to you is this is the southwest Alabama Senate districts.

A. Yes, sir.

Q. And as you look at the old districts, what constraints – Senate District 33 is a black majority district. That's the district of Senator Figures. Were there any constraints on what you could do with her district in repopulating it?

[3-131] A. Well, there were some constraints. One, we didn't want to cross the bay into Baldwin County, so we couldn't really go east. The two senators – the senator who represents District 34, Senator Glover, lives essentially north – well, sort of northwest of 33, and the senator who represents District 35 at that time, Senator Brooks, lives southwest of 33, so

going west was somewhat problematic in terms of going into their neighborhoods. And going north could have had the unintended consequence of cutting off the transportation, shall we say, from District 22 to Escambia County, so that was somewhat problematic. So going south was essentially the easiest course.

Q. Let's look at the new district. And –

A. New District 33?

Q. Well, new districts in this area. What changes did you make to District 35? That would be Senator Brooks' district, former district.

A. District 35, I believe, picked up some of the western part of Mobile County and lost some of its northern – northeastern part to Senate District 33.

Q. And then what effect did the change in Senate District 35 have on Senate District 34?

A. Pushed it a little further north; took up a little bit further north part of the county.

Q. Now, when you talked about the transportation or the land bridge, is that the kind of green between Washington County and [3-132] Baldwin County in District 22?

A. Yes, sir.

Q. Now, with respect to 22, Senator Sanders and Senator Singleton had pushed it south, and Senator – the Mobile districts moved it up out of Mobile

largely. Where did you get the additional population for Senate 22?

A. The additional population for Senate 22 came from northern Baldwin County.

Q. And was that area – was Senate District 34 – 32 overpopulated?

A. Yes, sir.

Q. I'd like to direct your attention now to the House plan. One of the issues that's come up is the movement of House District 53 from Jefferson County to Madison County. Did you recommend that move?

A. I did.

Q. And as far as whether that move was made or not, was that your call, or whose call would that have been?

A. Well, ultimately it was the Legislature's, but initially it was Representative McClendon's.

Q. And why did you make that recommendation?

A. Because every one of the minority majority districts in Jefferson County were underpopulated, some quite dramatically. And when we looked at it as a whole, they were around 70,000 folks short of ideal, those districts added together, which is [3-133] basically a district and a half. And looking at the map, I knew that most of the – if not all of the minority neighborhoods were already included in those

districts. So trying to repopulate them to get them back to deviation was going to retrogress most if not all of them, some of them maybe to the point where I was very concerned about Section 5 preclearance of the plan.

* * *

Q. And as a general matter, how did the black majority Senate [3-134] districts and black majority House districts in Jefferson County correspond? Do they occupy similar space?

A. They do.

Q. With respect to moving House District 73 to Shelby County, was that your recommendation?

A. It was, and it was also a feature of the map that Representative McClammy had given Representative McClendon to give to me.

Q. Why move – why move a district to Shelby County, a House district?

A. Well, two reasons. One, we needed population to repopulate the three majority black districts in Montgomery County, and the only – or most of the only logical population was in 73. Obviously, why move it to Shelby County? That was the fastest growing county in the state, I believe. And it also – every district whole or part that was in Shelby County was overpopulated, so something was going to need to take – one district there, I think, was dramatically overpopulated. House District, I think, 41. So it made

sense to move that district to a much faster growing area.

Q. And you talked about the McClammy map. Are you familiar with the concept of the package that Mr. McClammy gave Mr. McClendon?

A. I am.

Q. And what was the nature of that concept?

[3-135] A. It was a map, a couple of maps, and then corresponding demographic information.

Q. And did that demographic information include House District 73?

A. It did not. He drew the districts inside Montgomery County without a District 73.

Q. Did you use that concept in drawing the districts in Montgomery County?

A. I did. Obviously, it wasn't identical, because I also had to bring in House District 69, which is another majority African American House district that was short of population, so that changed the nature of it slightly, somewhat. But I tried to use the concept of using District 73 to repopulate the minority districts in Montgomery County.

* * *

[3-136] Q. You come up with a plan. What involvement did you have with the plan after it was produced and in the hands of Mr. McClendon and Senator Dial?

A. I was here during the session, and when there were changes that were made to the map, I would – I didn't do all of them, but I sat down with some of the legislators who had changes that they wanted made and remade them.

Q. Like who did you sit down with?

A. I sat down with Oliver Robinson; Patricia Todd; Mary Moore was on the phone with Oliver Robinson when I did that. I may have sat down with Marcel Black and a couple of changes that were made in that area.

Q. And Mr. Robinson and Mary Moore and Patricia Todd, are they all representatives from Birmingham?

A. Yes, sir.

Q. And what about Mr. Black and the folks there? Where are they from?

A. Those were changes in Lauderdale and Colbert County.

[3-137] Q. And is Mr. Black a Republican or Democrat?

A. Democrat.

Q. How about Mr. Robinson, Ms. Moore, and Ms. Todd?

A. Democrats.

Q. Can you think of anybody else you worked – helped work with?

A. Well, I made a few changes, again, to the map because I had had a couple of people who were outside their district because I had the wrong address. Or in one case, my computer program, Maptitude, put it in a different place than the state's computer program. So to be sure, I went back and made some minor corrections to make sure everybody had their own district to the extent possible.

JUDGE PRYOR: Do you know the race of those legislators with whom you made those changes in Birmingham and then the Lauderdale and Colbert counties?

THE WITNESS: Yes, I do. Oliver Robinson and Mary Moore are African American, and Patricia Todd and Marcel Black are white.

Q. And in the course of your work, to the extent you got input from legislators or from legislators through Senator Dial or Representative McClendon, do you think you carried out the wishes of those legislators?

A. Well, as you well know, no one gets everything they want in redistricting. But to the extent possible, I tried to, yes.

* * *

[3-138] MR. BLACKSHER: It's going to take longer for me to move this than it is for the examination, but let me do it.

APX 75 is Mr. Hinaman's deposition, and I move its admission.

MR. PARK: No objection, Your Honor.

JUDGE PRYOR: It's admitted.

MR. BLACKSHER: APX 68 is Mr. Hinaman's declaration, and I move its admission.

MR. PARK: No objection, Your Honor.

JUDGE PRYOR: It's admitted.

* * *

CROSS-EXAMINATION

BY MR. BLACKSHER:

Q. To be clear, Mr. Hinaman, your instructions were to pursue two goals: One, not to retrogress the size of the black [3-139] majorities in the majority black districts, and two, to the – I think you said to the extent possible, to comply with the wishes of incumbents with whom you met; is that correct?

A. That's correct. There were more goals than that, obviously. To stay within deviation and –

Q. Plus or minus 1 percent?

A. Yes. And comply to the extent possible with the guidelines set forth by the reapportionment committee.

Q. But as you said in your deposition, to the extent that the guidelines called for trying to preserve county boundaries, that was subordinated to these other goals; isn't that correct?

A. Certainly to one person, one vote. Yes, sir.

* * *

[3-142] Let me ask you this. When you were attempting to bring all majority black districts up to the size of the black majorities with 2010 census on top of 2001 plan – and you were reaching out to find black precincts, right?

A. Yes, sir.

Q. I did not ask you in your deposition this question, so let me ask it now. When you were trying to make – get the black population you needed, did that mean that you could only pick up a precinct that was majority black, or was there some cut point where you decided the precinct would not serve your purpose?

A. I'm assuming you're not referring to this map anymore, and you're talking about –

[3-143] Q. No. I'm not referring to this map anymore.

A. No. When I was adding population to majority black districts, my goal was not to retrogress the number that they had in 2001, meaning 2010 census, as applied to the 2001 lines. And in toto, whatever I added to a various district, I would look to see what change that made to the overall black percentage in that district. And so in some districts I could add in anything I wanted, and it didn't matter because they were – you know, either they didn't need that much population, or the changes I added didn't matter. But, yes, where it was something that I was concerned about retrogressing, I did look at the nature of the precincts I was adding, certainly.

Q. Yes. So, I mean, and we had an earlier demonstration. Bill Cooper showed how the Maptitude works. When you're doing it, as you take a precinct and add it, let's say, to – the majority black district we're talking about here is Senator Sanders' SD 23. Okay? And as you put a precinct into SD 23 with Maptitude, it pops up – you look at the table and see how much that's increased the black percentage. Right?

A. Correct. Yes, sir.

Q. And if that precinct did not increase the black percentage, or at least it didn't increase it as much as you wanted, you would simply split the precinct and go down to the block level and look for a majority black block or several blocks.

A. Well, that's a little bit of a simplification. I mean, I [3-144] tried to look at the additions en

masse, not just a precinct. I may add a white precinct, a majority white precinct and a majority African American precinct; but if you look at the end number, if it did not retrogress the overall end number for that precinct, then they were added in. If for some reason they retrogressed that number, then, yes. So I would split precincts.

Q. And when you split precincts, you would have to go to the block level?

A. Yes, sir.

* * *

[3-145] JUDGE THOMPSON: Let me ask you this. How do you define retrogression?

THE WITNESS: I define it, in terms of my work, in two ways: One, not lowering the overall total number of majority African American districts in either plan. Actually, we added one in the House plan. The number stayed the same in the Senate plan. And then looking at 2010 census as applied to 2001 lines, [3-146] whatever that number was, I tried to be as close to that as possible. And if I was significantly below that, I was concerned about that being retrogression that would be looked upon unfavorably by the Justice Department under Section 5.

Q. And you've had experience dealing with the Justice Department in preclearance proceedings in other cases?

A. I've drawn plans that were precleared. Yes, sir.

* * *

CROSS-EXAMINATION

BY MR. TANNER:

* * *

[3-149] Q. Did you – were you aware of any related studies, for example, about variations among the state's black communities in terms of voting or anything else?

A. Well, "anything else" covers a lot of subjects, but I was –

Q. I'll be more specific. How about socioeconomic characteristics such as income, type of employment, educational level achieved?

[3-150] A. I did not look at those factors.

Q. Attitudes?

A. No, sir.

Q. Did you obtain or already have any information about the black population, variations in the black population in various areas such as Birmingham and Mobile, any differences?

A. Differences in terms of?

Q. Of any of the characteristics I've mentioned: Either voting or education, employment, types of employment.

A. No, sir.

* * *

[3-164] A. No. I don't believe – I tried to draw those districts as close to the numbers as possible and practicable as they were in the 2001 plan to avoid problems with potential Section 5 preclearance.

* * *

[3-173] Q. And Talladega County was intact. And so you substantially reconfigured both districts, changing the core or changing the configuration of both districts fairly dramatically.

A. Well, I wouldn't say the core, but it changed the configuration of both districts.

Q. Both districts dramatically. And you know from campaigning around the state that there's a lot of difference between Talladega County and Shelby County.

A. Yes, sir.

Q. And the – basically, it moved a black majority population out of Talladega County in Senate District 11 and put it in [3-174] rapidly growing, heavily white Shelby County. Correct?

A. Or put it into Senate District 15.

Q. Yes. To Senate District 15 with the Shelby County voters, the Shelby County dominated district.

* * *

[3-180] Q. Well, didn't your data from the Obama election give strong indication of that?

A. I didn't specifically look at it, but I'm sure it would have.

Q. But didn't even look how your black majority districts had performed in any election?

[3-181] A. I was more concerned in drawing minority districts as to whether I was retrogressing the overall population, black percentage, than voter results.

Q. So you only looked at the voter results of the Obama race and the lieutenant governor's race when you were looking at the white districts.

A. Well, "only" is a dangerous word, but that was not primarily what I was looking at when I was drawing the minority districts. You're correct.

* * *

[3-182] Q. But I believe you indicated that you did not examine that issue; that is, whether it was necessary – how these districts performed in the Obama election, for example.

A. That's correct. I looked more at the overall number and whether I was retrogressing the total black population in those districts.

[3-183] Q. And by the overall number, you mean –

A. Total population.

Q. – total population black?

A. Yes, sir.

Q. And by retrogressing, you mean lowering that percentage?

A. Yes, sir.

* * *

[3-186] identical numbers that they were 10 years ago.

Q. The identical?

[3-187] A. By total black percentage.

* * *

[3-191] TOM BRUNELL

The witness, having first been duly sworn to speak the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. PARK:

* * *

[3-197] Q. Can you tell us why you favor one person, one vote over other considerations?

A. Some of the other – I mean I just – you know, kind of trying to think of them as in some sort of hierarchy, I think a lot of the other ones – for instance, like communities of interest – for me come at a much lower level than one person, one vote.

One person, one vote is sort of where we started in the 1960's. This is what got the courts involved in redistricting, and I think the underlying notion of equal voting power is critical. I think it makes perfect sense, and it's something that we should put ahead of some of these other things like a community of interest.

I mean, I've heard – I mean, anything can be a community of [3-198] interest. Right? I mean, so at some level, the notion has lost any worth at all. I've heard – I was involved in a Texas case where a lawyer was saying, well, our communities of interest are what the districts looked like in the 1950's. So at that point, for me, the notion of a community of interest, once anything can be a community of interest, well, I'm no longer interested in that because it has no value at all to anybody involved.

So communities of interest, for instance, I think are less important. Compactness is less important than one person, one vote. Protecting artificial lines like municipal lines or county lines is less important than equalizing voting power, in my opinion. I'm sure some people disagree with me.

For me, those – I think that those things come at a secondary level or even a tertiary level relative to equalizing voting power of residents; of citizens.

Q. The 2001 and previous plans used plus or minus 5, and these plans use plus or minus 1 as far as overall deviations. Which do you prefer?

A. I prefer no deviations, but I vastly prefer a plus or minus 1 deviation over plus or minus 5.

Q. Why do you prefer the smaller deviation to the larger?

A. The only – any deviation that we pick is necessarily arbitrary. Right? One percent is arbitrary. Five percent is arbitrary. You know, 2.2968 is arbitrary. Whatever we pick is arbitrary. You get back to, why 5? Why not 5.5? Well – you [3-199] know. So drawing these arbitrary bright lines is very, very difficult, whereas if we have zero population deviations, that's immediately defensible and obvious to everyone.

So that's one of the major reasons I prefer it. But then also because I favor equalizing voting power across – you know, across the state, across districts within the state, for all the citizens.

Q. Is a smaller deviation related in some way to the ability to generate a political gerrymander?

A. Yes. Yeah, that's another key reason, is that this was kind of a very simple tool that we've kind of handed over to map makers to fiddle with, to use for partisan purposes. Right?

And the Court talked about it earlier. Right? I mean, if you're gerrymandering, you are underpopulating your own districts, right, because you want to use your population more efficiently and overpopulate the opposition's districts.

Q. And the larger deviation allows you to do that.

A. Yeah. That's right.

Q. Now, are you saying that a zero deviation plan can never be politically gerrymandered?

A. No. You could still gerrymander a zero deviation plan. But it is one tool that we can take away. Right? This is just like a wrench in the toolbox. Get rid of that wrench, and then we can strain the map makers in very useful ways.

* * *

[3-219] JAMES H. MCCLENDON

The witness, having first been duly sworn to speak the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. PARK:

Q. Would you please state your name for the record.

A. James H. McClendon.

Q. And are you a member of the Alabama Legislature?

A. Yes, sir, I am.

* * *

[3-220] Q. Were you member of the reapportionment committee?

A. Yes, sir.

Q. How did you become a member of the reapportionment committee?

A. Appointed by the speaker.

Q. And were you appointed to represent a particular district, or were you appointed at large?

A. I believe I was an at-large member.

Q. And how were you – were you selected as chair, cochair of the committee?

A. I was selected as House chair, which made me – that would be chair of the House Reapportionment Committee, which made me cochair of the joint committee. That was done by an election of the committee members.

Q. You've been in the courtroom throughout the trial, and you've heard the testimony about the adoption of the guidelines. What's your view about the appropriateness of using [3-221] plus, minus 1 percent as the overall deviation?

A. Well, just makes good sense to me. If you're interested in one person, one vote, that's a lot closer than 5 percent, or actually, plus or minus 5, which gives you 10 percent deviation. You know, we had already gone through this with the congressional, which has zero percent, and state board of education

with 1 percent. And we went right through with DOJ preclearance, so I didn't have a problem at all with 1 percent. It made sense to me.

Q. And you've heard testimony about the Voting Rights Act. What was your understanding of what the state wanted to do with respect to Section 5 and its obligations under Section 5?

A. On the Voting Rights Act – are we talking about retrogression now?

Q. Yes, sir.

A. Well, my understanding of retrogression is that a district or – an individual or district is retrogressed if the minorities in that district, whether by race or language, are worse off after redistricting than they were before redistricting. And of course, we don't have any minorities by language, so it's a racial thing.

Q. And was the goal of the redistricting effort to get the approval of the Department of Justice?

A. Yes, sir. We knew that we were going to be subject to preclearance by DOJ, and we knew that was a major hurdle.

[3-222] Q. Did you know exactly what DOJ looked for when it reviewed plans?

A. Well, when it came to retrogression and talking about percentages, to the best of my knowledge, there wasn't any hard numbers. There were relative numbers, but there were not any hard numbers.

There was nothing that said 50 plus – 50 percent plus one is okay. In fact, my impression was that was not the case. So really, what we targeted was we tried to look at the 2010 census, overlay it on the districts, and try not to change the percentages of the citizens, the black citizens, in a district any more than we had to. Tried to keep them in about the same proportion as they were.

* * *

[3-223] Q. And you heard testimony from Senator Dial that he offered to meet – or that he met with every one of his 34 colleagues to talk about the new districts. What kind of offer – or what did you do about meeting with your colleagues?

A. I made the offer to all 104 members of the House to come sit down and either work with Mr. Hinaman or myself. As far as the Democrats, I went to Representative McCampbell, who is minority chair, I guess, of the House caucus, black caucus. I spoke to him personally on the House floor. Informed him that I was available. I did the same thing with Representative Craig Ford, who was minority chair for the Democratic caucus in the House. I offered that to them. I gave them a phone number to call and [3-224] set up a time with the lady that worked with me up in my office, and we set up schedules. Did the same thing with the Republican members in my caucus. So I made the offer to every House member. Not every House member came.

Q. And Mr. Hinaman testified that he met with Republicans. Did you meet with any of the Democrats?

A. I met with all of them that wanted to meet. I made myself available to them.

* * *

[3-225] Q. Okay. Let me direct your attention to State DMC 001517 of Exhibit 459. Can you tell us what this is?

A. Well, that's pretty typical of what I did. In this case, we had – I wish I knew who 98 is. I'm looking at the bottom, and I can't read that signature. But there was someone who wanted – this was discussing how to put these districts together, and there were common lines in there. And this was a pretty good example. I believe this involved people from two different parties that sat down and worked out how they wanted to work out a common line. And as long as they could do that without affecting the deviations, I would turn this over to Mr. Hinaman and ask him to do his best to incorporate it into what he had in his computer. But this is pretty typical of the way I went about doing this. And in this case, we had both of [3-226] them initial it.

Q. And the two districts that are involved are House Districts 102 and 98; is that right?

A. That's –

Q. Does that appear to be?

A. Correct.

Q. Let me show you what has been marked as 480, the 2001 House plan, and direct your attention to Mobile. Is that what we're talking about, District 98 and the contiguous district to its north, District 102?

A. That would have to be.

Q. And does the note on 1517 read: Please move from HD 98 to HD 102. This move has been approved by Rep. C. Fincher and Rep. N. Bracy.

A. Yes.

Q. Those two.

A. Fincher is Republican, Bracy is the Democrat, and they just got together and worked out something. That's what they wanted to do.

Q. And is Fincher a white Republican?

A. Yes, sir, he is.

Q. And Bracy is a black Democrat?

A. That is correct.

* * *

[3-229] Q. Let me go back a step or so. Did you get anything from Mr. McClammy with respect to the Montgomery area House districts?

A. Oh, yes, sir, I certainly did.

Q. What did you get from Mr. McClammy?

A. He brought a really nice map. And it was a big map. It wasn't one of these small, you know, letter size maps. It was a big map. And I took a look at that map, and he said that he had had – he and the other – I believe the other black legislators [3-230] in Montgomery County had agreed upon this and thought it was a good plan. And so I turned that over to Mr. Hinaman and asked that he see what he could do to work it into the Montgomery area for representation.

Q. What did Mr. McClammy tell you about using that plan or any other?

A. You know, he mentioned another group, minority, black folks, that had maybe had some maps, and he suggested that his map would be a better map.

* * *

[3-234] Q. In adopting the overall deviation of plus/minus 1, did you have any intention of discriminating against the African American voters of Alabama?

[3-235] A. Absolutely not.

Q. And in putting together the House plan, did you have any intent to discriminate against the African American voters?

A. I did not.

* * *

[3-246] CROSS-EXAMINATION

BY MR. TANNER:

* * *

[3-257] Q. And in terms of Voting Rights Act, I believe the testimony is that the state Legislature focused solely on the black percentage in terms of the majority black districts in terms of drawing those districts.

A. I would agree with that statement.

* * *

Redistricting Population Comparison
Alabama State House – 2002 Plan Compared to Act 2012-602 Plan (2010 Census)

2002 Plan**Act 2012-602 Plan**

District	Population	NH DOJ Black	% NH DOJ Black	% NH DOJ 18+ Black	District	Population	NH DOJ Black	% NH DOJ Black	% NH DOJ 18+ Black
001	47247	8627	18.26%	16.45%	1	45968	7143	15.5%	14.06%
002	45462	1067	2.35%	2.10%	2	45486	1919	4.2%	3.92%
003	42348	8277	19.55%	18.28%	3	45972	11136	24.2%	22.92%
004	51181	5074	9.91%	9.63%	4	45083	5959	13.2%	12.23%
005	48495	4992	10.29%	9.82%	5	45403	5846	12.9%	12.37%
006	57674	17734	30.75%	29.93%	6	45796	7731	16.9%	16.97%
007	40956	4072	9.94%	9.79%	7	45089	1855	4.1%	3.97%
008	42351	11316	26.72%	24.03%	8	45083	9248	20.5%	18.58%
009	45371	1195	2.63%	2.39%	9	45083	964	2.1%	1.87%
010	50267	8341	16.59%	15.28%	10	45110	7468	16.6%	15.26%
011	44104	247	0.56%	0.38%	11	45282	334	0.7%	0.47%
012	45798	783	1.71%	1.57%	12	45070	726	1.6%	1.51%
013	39882	2951	7.40%	6.66%	13	45070	2978	6.6%	5.96%
014	40597	1571	3.87%	3.40%	14	45073	1305	2.9%	2.45%
015	48965	7848	16.03%	14.88%	15	45893	6387	13.9%	12.36%
016	40993	4542	11.08%	10.42%	16	45080	4803	10.7%	10.95%
017	42595	1364	3.20%	3.03%	17	45082	2026	4.5%	4.15%
018	43784	2066	4.72%	4.55%	18	45585	2618	5.7%	5.59%
019	42380	29685	70.04%	67.70%	19	45081	27727	61.5%	60.15%
020	47531	1570	3.30%	3.01%	20	45808	1852	4.0%	3.65%
021	48999	13492	27.54%	24.91%	21	45614	4050	8.9%	8.07%
022	48959	2996	6.12%	5.67%	22	45872	2772	6.0%	5.62%
023	43186	1823	4.22%	3.72%	23	45972	1954	4.3%	3.74%
024	48127	819	1.70%	1.45%	24	45972	791	1.7%	1.46%
025	64950	10726	16.51%	16.41%	25	45709	7490	16.4%	15.90%
026	52448	844	1.61%	1.26%	26	45721	805	1.8%	1.47%
027	47288	934	1.98%	1.67%	27	45827	838	1.8%	1.54%
028	40514	7559	18.66%	17.53%	28	45887	13718	29.9%	28.05%

2002 Plan**Act 2012-602 Plan**

District	Population	NH DOJ	% NH	% NH DOJ	District	Population	NH DOJ	% NH	% NH DOJ
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		Black	DOJ Black	18+ Black				Black	DOJ Black	18+ Black	
029	43353	7730	17.83%	16.75%	29	45910	1762	3.8%	3.11%		
030	44979	1910	4.25%	3.66%	30	45216	2106	4.7%	4.07%		
031	46434	9880	21.28%	20.08%	31	45842	7379	16.1%	15.23%		
032	38800	23133	59.62%	56.97%	32	45504	27450	60.3%	57.68%		
033	43809	10601	24.20%	22.27%	33	45905	9925	21.6%	19.87%		
034	50560	786	1.55%	1.35%	34	45386	852	1.9%	1.62%		
035	44612	7039	15.78%	14.46%	35	45957	7571	16.5%	15.18%		
036	46065	6613	14.36%	12.80%	36	45957	5788	12.6%	11.28%		
037	43958	9357	21.29%	19.94%	37	45966	13623	29.6%	28.07%		
038	44337	13409	30.24%	28.80%	38	45968	8390	18.3%	17.13%		
039	46905	2164	4.61%	4.21%	39	45968	2584	5.6%	5.08%		
040	49653	5895	11.87%	11.62%	40	45932	6246	13.6%	13.19%		
041	73181	8191	11.19%	10.60%	41	45092	5561	12.3%	11.63%		
042	48338	5639	11.67%	10.80%	42	45966	5149	11.2%	10.41%		
043	56056	4185	7.47%	7.02%	43	45209	3052	6.8%	6.48%		
044	48707	14447	29.66%	25.54%	44	45088	5278	11.7%	9.87%		
045	42890	15444	36.01%	31.72%	45	45087	6983	15.5%	14.03%		
046	50398	4592	9.11%	8.43%	46	45316	3498	7.7%	7.17%		
047	48011	7898	16.45%	14.65%	47	45578	9273	20.3%	17.77%		
048	54047	4750	8.79%	8.17%	48	45592	2644	5.8%	5.85%		
049	52014	6385	12.28%	11.59%	49	45877	6069	13.2%	12.60%		
050	55378	5507	9.94%	9.77%	50	45961	3981	8.7%	8.60%		
051	48552	6406	13.19%	10.98%	51	45073	2762	6.1%	5.33%		
052	43159	25934	60.09%	58.52%	52	45083	27077	60.1%	57.21%		
053	35378	19708	55.71%	52.49%	53	45106	25372	56.2%	52.88%		
054	34905	19817	56.77%	53.37%	54	45070	25651	56.9%	52.50%		
055	35572	26159	73.54%	71.22%	55	45071	33153	73.6%	70.60%		
056	41064	25566	62.26%	59.42%	56	45071	28069	62.3%	59.71%		
057	36199	24792	68.49%	66.52%	57	45071	30890	68.5%	65.98%		
058	37443	29238	78.08%	74.02%	58	45088	32903	73.0%	67.99%		
059	32838	22013	67.04%	64.25%	59	45218	34739	76.8%	74.28%		
060	36704	24822	67.63%	65.15%	60	45084	30594	67.9%	65.68%		

2002 Plan**Act 2012-602 Plan**

District	Population	NH DOJ Black	% NH DOJ Black	% NH DOJ 18+ Black	District	Population	NH DOJ Black	% NH DOJ Black	% NH DOJ 18+ Black
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061	41422	12668	30.58%	27.95%	61	45078	8601	19.1%	17.48%
062	55022	12961	23.56%	21.95%	62	45840	7250	15.8%	14.40%
063	59073	14172	23.99%	20.87%	63	45251	6146	13.6%	12.49%
064	40427	10471	25.90%	25.47%	64	45972	6679	14.5%	13.45%
065	38681	10439	26.99%	25.71%	65	45073	10851	24.1%	23.08%
066	40491	11154	27.55%	25.57%	66	45971	11666	25.4%	24.54%
067	37878	26188	69.14%	65.59%	67	45078	31189	69.2%	65.73%
068	36234	22646	62.50%	59.97%	68	45069	29109	64.6%	61.82%
069	37572	24087	64.11%	61.99%	69	45477	29188	64.2%	61.83%
070	39253	24295	61.89%	56.31%	70	45970	28607	62.2%	57.13%
071	38094	24485	64.28%	62.04%	71	45348	30334	66.9%	64.42%
072	39414	23696	60.12%	57.52%	72	45346	29265	64.5%	61.88%
073	48266	23431	48.55%	45.46%	73	45936	4819	10.5%	9.77%
074	41047	12539	30.55%	26.57%	74	45646	11280	24.7%	22.23%
075	60140	16759	27.87%	26.91%	75	45946	12224	26.6%	27.12%
076	44894	31229	69.56%	67.48%	76	45872	33962	73.9%	71.24%
077	34998	25753	73.58%	71.48%	77	45954	30812	67.0%	64.20%
078	30880	22955	74.34%	72.57%	78	45957	32246	70.2%	67.43%
079	52950	7588	14.33%	13.38%	79	45972	5450	11.9%	11.09%
080	54900	13051	23.77%	21.48%	80	45964	8084	17.6%	15.69%
081	43803	11588	26.45%	24.44%	81	45932	9214	20.1%	18.32%
082	43389	24808	57.18%	54.19%	82	45858	28504	62.2%	60.48%
083	41039	23404	57.03%	55.51%	83	45973	26523	57.7%	55.53%
084	41317	20934	50.67%	49.23%	84	45969	24068	52.4%	50.99%
085	42429	20523	48.37%	45.84%	85	45229	22847	50.5%	47.22%
086	49071	8357	17.03%	14.81%	86	45965	6347	13.8%	12.35%
087	46299	4317	9.32%	8.65%	87	45961	4252	9.3%	8.55%
088	56499	9520	16.85%	15.51%	88	45966	8536	18.6%	16.93%
089	44249	14490	32.75%	31.07%	89	45678	14732	32.3%	30.61%
090	39991	14302	35.76%	33.64%	90	45812	15994	34.9%	32.91%
091	49948	8523	17.06%	16.05%	91	45070	7243	16.1%	15.03%
092	40506	5434	13.42%	11.93%	92	45101	5892	13.1%	11.65%

2002 Plan**Act 2012-602 Plan**

District	Population	NH DOJ Black	% NH DOJ Black	% NH DOJ 18+ Black	District	Population	NH DOJ Black	% NH DOJ Black	% NH DOJ 18+ Black
093	46741	8611	18.42%	16.24%	93	45956	8120	17.7%	15.66%
094	59763	4389	7.34%	6.68%	94	45965	3900	8.5%	7.52%

095	61642	3685	5.98%	4.92%	95	45971	2409	5.2%	4.24%
096	50198	6345	12.64%	11.62%	96	45970	4819	10.5%	10.06%
097	35406	21502	60.73%	57.35%	97	45071	27388	60.8%	56.73%
098	37831	24676	65.23%	62.38%	98	45069	27044	60.0%	57.96%
099	39791	29225	73.45%	70.09%	99	45069	29617	65.7%	62.07%
100	55488	7883	14.21%	12.78%	100	45069	6865	15.2%	13.64%
101	42749	10726	25.09%	22.28%	101	45089	7765	17.2%	15.76%
102	50860	6236	12.26%	11.62%	102	45071	3654	8.1%	7.53%
103	40611	28386	69.90%	64.83%	103	45075	29443	65.3%	60.18%
104	47450	7421	15.64%	13.97%	104	45072	7279	16.1%	13.98%
105	44279	4910	11.09%	9.82%	105	45072	4251	9.4%	8.61%
Total	4,779,736	1,263,285	26.43%	24.85%	Total	4,779,736	1,263,285	26.43%	24.85%
Total of 26 Majority BVAP Districts	991,726	648,200	65.36%	62.40%	Total of 27 Majority BVAP Districts	1,224,702	790,924	64.58%	61.58%
Total of 6 Influence Districts (31.07 to 49.23% BVAP)	259,142	109,124	42.11%	39.52%	Total of 3 Influence Districts (30.61 to 47.22% BVAP)	136,719	53,573	39.18%	36.76%
Difference in Black Pop in Majority Black Districts (2002 v. ACT 2012_602 Plan)				-142,724					
Difference in Black Pop in Influence Districts (2002 v. ACT 2012_602 Plan)				55,551					

Redistricting Population Comparison
Alabama State Senate – 2002 Plan Compared to Act 2012-603 Plan (2010 Census)

2002 Plan					Act 2012-603 Plan				
District	Population	NH DOJ Black	% NH DOJ Black	% NH DOJ 18+ Black	District	Population	NH DOJ Black	% NH DOJ Black	% NH DOJ 18+ Black
001	135057	17971	13.31%	12.26%	1	136648	15504	11.35%	10.72%
002	179058	34672	19.36%	19.10%	2	137922	34063	24.70%	24.35%
003	151168	21148	13.99%	12.80%	3	137642	19445	14.13%	12.98%
004	123291	4975	4.04%	3.89%	4	135214	2595	1.92%	1.75%
005	134976	13569	10.05%	9.20%	5	135415	9066	6.69%	6.38%
006	117045	7234	6.18%	5.88%	6	136009	21129	15.54%	14.67%
007	148905	48386	32.49%	30.88%	7	137911	38169	27.68%	26.12%
008	142128	4540	3.19%	2.90%	8	137920	4960	3.60%	3.22%
009	144554	3219	2.23%	1.87%	9	137921	2460	1.78%	1.44%
010	125075	17247	13.79%	12.65%	10	137323	17399	12.67%	11.69%
011	125111	42844	34.24%	32.30%	11	136114	20828	15.30%	14.40%
012	142431	17755	12.47%	11.52%	12	135258	27686	20.47%	19.03%
013	132777	27437	20.66%	19.56%	13	137883	28967	21.01%	19.88%
014	168669	20687	12.26%	11.36%	14	136210	19533	14.34%	13.76%
015	160461	20844	12.99%	11.76%	15	136868	20108	14.69%	14.38%
016	149527	17230	11.52%	10.47%	16	137160	16465	12.00%	10.86%
017	157178	13224	8.41%	7.49%	17	135227	7525	5.56%	4.93%
017	112472	67410	59.93%	57.31%	18	135258	79971	59.12%	56.43%
019	109165	78214	71.65%	69.31%	19	135218	88419	65.39%	62.68%
020	107375	83713	77.96%	74.44%	20	135211	65699	63.38%	59.03%
021	140682	35581	25.29%	22.81%	21	135621	21337	15.73%	14.34%
022	137373	39126	28.48%	27.48%	22	137108	29821	21.75%	20.70%
023	111939	72521	64.79%	61.87%	23	135338	87706	64.81%	61.67%
024	118832	74662	62.82%	59.38%	24	137724	87175	63.30%	59.74%
025	157932	45466	28.79%	26.65%	25	135492	31191	23.02%	21.74%
026	120666	87785	72.75%	70.87%	26	136451	102641	75.22%	72.70%
027	139166	35474	25.49%	22.90%	27	137918	29517	21.40%	19.50%

2002 Plan					Act 2012-603 Plan				
District	Population	NH DOJ Black	% NH DOJ Black	% NH DOJ 18+ Black	District	Population	NH DOJ Black	% NH DOJ Black	% NH DOJ 18+ Black
028	131368	67061	51.05%	49.82%	28	137909	82686	59.96%	58.03%
029	136679	21062	15.41%	13.65%	29	137921	21329	15.46%	13.81%
030	139399	40991	29.41%	28.15%	30	135374	30070	22.21%	21.33%
031	129622	31542	24.33%	22.44%	31	137917	27190	19.71%	18.45%
032	155619	9815	6.31%	5.47%	32	137918	11209	8.13%	7.35%
033	111915	72622	64.89%	61.55%	33	136214	97679	71.71%	68.10%
034	155435	20794	13.38%	12.20%	34	135267	17435	12.89%	11.68%
035	126686	46474	36.68%	32.67%	35	135232	26308	19.45%	17.27%
Total	4,779,736	1,263,285	26.43%	24.85%		4,779,736	1,263,285	26.43%	24.85%
Total of 7 Majority BVAP Districts	792,364	536,917	67.76%	64.77%	Total of 8 Majority BVAP Districts	1,089,323	711,976	65.36%	62.21%
Total of 4 Influence Districts (30.88% to 49.8% BVAP)	532,070	204,765	38.48%	36.36%	Zero Influence Districts	0	0	0.0%	0.0%
Difference in Black Pop in Majority Black Districts (2002 v. ACT 2012_603 Plan)				-175,059					
Difference in Black Pop in Influence Districts (2002 v. ACT 2012_603 Plan)				204,765					

DECLARATION OF RANDY HINAMAN

1. My name is Randy Hinaman. I am over the age of 21 years, have personal knowledge of the facts set forth, and am competent to testify regarding them.

* * *

4. In drawing the lines for all the new districts, I used information conveyed to me by Senator Dial, Representative McClendon, and individual legislators to try to make sure we accommodated the legislators' wishes to the extent possible. I did make recommendations, including the recommendations to move HD 53 from Birmingham to Huntsville and to make HD 85 a majority-black district thereby increasing the total number of black-majority districts under the House plan to 28, but the decision to follow those recommendations was made by Representative McClendon, not by me.

5. Senator Dial gave me a map of the Birmingham-area black majority Senate districts (SDs 18, 19, and 20) that I understood came from Senator Rodger Smitherman. That map did not include any demographic information with it, but when I looked at the neighborhoods included in the new district boundaries, I saw that the black population in the proposed new districts was about the same percentage as in the old districts. That map also split a number of precincts, which I input into the draft Senate plan as they came to me. I estimate that I used 90-95% of that map in drawing the lines for the Senate plan, with the changes coming around the edges of the

districts. The decision to follow these recommendations was made by Senator Dial.

* * *

10. As I have previously noted, that black-majority districts in the Alabama Senate plan were each under-populated coming into the 2012 redistricting effort. This was particularly true of SDs 23 and 24, which are located in the rural west-central part of the State south of Tuscaloosa and north of Mobile. SD 24 borders on Mississippi. SD 23 was 24,625 people (-18.03%) short of an ideal Senate district, and SD 24 was 17,732 (-12.98%) short. Both districts needed to add population and to remain reliable black majority districts, and the best place to get the additional population was by pushing south into SD 22 and east into SD 30. That would cause less disruption to other districts than pushing north and east toward Tuscaloosa. This also kept the African-American percentages nearly identical to what they had been. Pushing south had the additional benefit of putting the extra 19,000 people in SD 32 in Baldwin County into a district that met the allowable population deviation. As a result, the changes I proposed included pushing SD 22 further into Baldwin County. Senator Dial made the decision on how to fit these districts into the Senate plan, not me.

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

ALABAMA LEGISLATIVE)	
BLACK CAUCUS, BOBBY)	
SINGLETON, ALABAMA)	
ASSOCIATION OF BLACK)	
COUNTY OFFICIALS,)	
RED ARMSTEAD, GEORGE)	
BOWMAN, RHONDEL)	
RHONE, ALBERT P.)	
TURNER, JR., AND)	
JOLES WILLIAMS, JR.)	
INDIVIDUALLY AND ON)	
BEHALF OF OTHERS)	
SIMILARLY SITUATED)	
Plaintiffs,)	
)	
v.	)	Civil Action No.
THE STATE OF ALABAMA;	)	2:12-CV-491-WKW-
BETH CHAPMAN, IN HER	)	MHT-WHP
OFFICIAL CAPACITY AS	)	(3 Judge Court)
ALABAMA SECRETARY)	
OF STATE,)	
Defendants,)	
DEMETRIUS NEWTON, et al.,)	
Plaintiffs,	)	Civil Action No.
	)	2:12-CV-1081-WKW-
v.	)	MHT-WHP
THE STATE OF ALABAMA,)	
ET AL.)	

DEPOSITION OF MR. HINAMAN

Q. Okay. Item 3 on PX-6 is goals for each plan. What goals were discussed?

A. That was primarily one of my questions was are we putting members together? Are we making sure we do not put incumbent members of the legislature together? Are there any other goals related to the map?

Q. And the responses you got were?

A. My response I got are please do not – our goal is to not put any members together if possible. Obviously that may not be possible in all cases. As it turned out, it was possible in the Senate map but not in the House.

(Hinaman Dep. 25:3-15)

* * *

Q. Did you go over the guidelines that the Reapportionment Committee had voted for?

A. We did. We talked about those, yes.

Q. And were you given a copy of those?

A. Yes, sir. If I may just add one other thing to your earlier question on the goals? It was also a goal to change each district to some extent the least amount possible but still obviously live within the guidelines of the Reapportionment Committee and the deviation. So, in other words, if Senate District X had these four counties, you know, try to keep it as

close to these four counties as possible, which obviously isn't always possible.

(Hinaman Dep. 25:16 – 26:3)

* * *

Q. But you said that the requirement that contests between incumbent members of Congress, the legislature and the state board will be avoided whenever possible, that was discussed?

A. Yes, sir.

(Hinaman Dep. 29:16-20)

* * *

Q. Paragraph 5, every ESI, which is electronically stored information I think is what it stands for, or database reflecting demographic information as far as voting patterns and so forth. That's what you provided on the thumb drive?

A. Yes, it's part of what's on the thumb drive. Yes, sir.

Q. Are there any other databases that you haven't told me about either that were provided by Maptitude or that you got from the Reapportionment Office or the RNC that you used?

A. No. the only exception to that, which you haven't gotten to that piece of paper, but that's a list of Senators and their addresses.

I also had a list of House members and their addresses, but for some reason I couldn't find it in my computer. But I was given a list of House members and their addresses if you count that as data.

Q. Well, you did have to locate the residences of incumbents on the map at some point, didn't you?

A. Yes, sir.

Q. And you used a GPS function to do that?

A. I was provided that by the Reapportionment Committee. Yes.

(Hinaman Dep. 36:1-24)

* * *

Q. Would it have been possible to put Senator Irons and Senator Bedford in the same district?

A. It would have been and I actually discussed that as a possibility, but both Senator Dial and Pro Tem Marsh told me that they did not want to put two senators in the same district.

(Hinaman Dep. 143:21 – 144:1)

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

ALABAMA LEGISLATIVE
BLACK CAUCUS, et al.,

Plaintiffs,

vs.

CIVIL ACTION NO.

THE STATE OF ALABAMA,
et al.,

2:12-CV-0069-
WKW-MHT-WHP

Defendants.

* * * * *

DEMETRIUS NEWTON,
et al.,

Plaintiffs,

v.

CIVIL ACTION NO.

THE STATE OF ALABAMA,
et al.

2:12-CV-0069-
WKW-MHT-WHP

Defendants.

* * * * *

DEPOSITION OF THEODORE S. ARRINGTON
JUNE 28, 2013

* * * * *

THEODORE S. ARRINGTON

The witness, after having first been duly sworn
to speak the truth, the whole truth and nothing but
the truth testified as follows:

* * *

Q. Can you explain the evidence that supports your conclusion that the legislature acted with discriminatory intent in adopting the 2012 legislative plans?

* * *

A. Now, remember. I don't by any means say that they were the exclusive motive. Obviously partisanship is always the major motive when you're redrawing districts – when legislators are drawing districts. Not when I draw districts or necessarily when courts do. But when legislators draw districts, we all know that partisanship is the most important factor. But in Alabama, partisanship and race are inextricably combined. They can't be separated in a convenient way.

So by acting to prevent the election of white Democrats, even though you're protecting black districts, when you act to prevent the election of white Democrats, you're essentially cutting off the blacks from the ability to form alliances with whites, putting them in a political ghetto, and that's racial discrimination. And that was part and parcel of the intent of the legislature by their own words.

Q. When you talk about the statements of legislators/you were talking about Senator Beason and Representative Lewis; is that right?

A. I also think comments that have been made/for example/to the media and – that the intent was to eliminate all of the white Democratic districts.

(Arrington Dep. 20:4-7; 21:6-22:10)

Q. Should the Republicans step in between him and himself?

A. Yeah/they should. But they are not going to. I'm not – I'm not naive. I've been involved in politics since 1960. They are not going to do that.

(Arrington Dep. 48:13-49:18)

Q. What do you point out with respect to the process of overall design?

A. The overall design of the plan was in the hands of Mr. Hinaman, and whatever instructions he received from the cochairs, from the president pro temp, and from the lieutenant governor and what he assumed from the nature of the 501C4 who is paying his bills, from the fact that he said specifically that he would only work with Republican legislators and that the cochairs have said specifically that his job was to work with the Republican caucus, period.

So the overall design of the plan comes basically from Mr. Hinaman based on what we know of the partisan nature of his instructions.

Q. And that's partisan. Right? Correct?

A. Yes. Keeping in mind that race and party cannot be disentangled in Alabama. Can't be disentangled anywhere, but it's particularly difficult to disentangle it in the deep South.

Q. How do we know if it's race or politics?

A. Because it is the same. The major way that you know how a precinct has voted in most of Alabama is the percentage of blacks in that precinct. And that will tell you – I'll give you a correlation: Higher than 8, probably higher than 9, but certainly higher than 8 between the percentage black in a precinct and the vote for Democrats in that precinct.

Now, there are some parts of Alabama where there are still substantial numbers of white Democrats. But in most of Alabama, you're down in the 30 percent or so of whites that are voting for the Democrats.

(Arrington Dep. 65:2-66:12)

Q. Okay.

A. Blacks vote overwhelmingly 90 percent or more for Democrats, and everybody in Alabama knows that.

(Arrington Dep. 149:2-5)

TESTIMONY ON RACIALLY POLARIZED
VOTING IN ALABAMA AND ITS IMPLICATIONS
FOR AFRICAN AMERICAN VOTER
OPPORTUNITIES IN REDISTRICTING PLANS

Allan J. Lichtman
Distinguished Professor of History
American University
Washington, DC 20016

July 30, 2013

Pursuant to 28 U.S.C. § 746, I declare under penalty of perjury that the information set forth in this report is true and correct to the best of my knowledge and belief.

/s/ Allan J. Lichtman
Allan J. Lichtman

I. Qualifications

1. My name is Allan J. Lichtman. My current position is Distinguished Professor of History at American University in Washington, D.C., where I have been employed for 40 years. Formerly, I served as Chair of the History Department and Associate Dean of the College of Arts and Sciences at American University. I received my BA in History from Brandeis University in 1967 and my Ph.D. in History from Harvard University in 1973, with a specialty in the mathematical analysis of historical data. My areas of expertise include political history, electoral analysis, and historical and quantitative methodology.

2. I am the author of numerous scholarly works on quantitative methodology in social science. This scholarship includes articles in such academic journals as *Political Methodology*, *Journal of Interdisciplinary History*, *International Journal of Forecasting*, and *Social Science History*. In addition, I have coauthored *Ecological Inference* with Dr. Laura Langbein, a standard text on the analysis of social science data, including political information. I have published articles on the application of social science analysis to civil rights issues. This work includes articles in such journals as *Journal of Law and Politics*, *La Raza Law Journal*, *Evaluation Review*, *Journal of Legal Studies*, and *National Law Journal*. My scholarship also includes the use of quantitative and qualitative techniques to conduct contemporary and historical studies, published in such academic journals as *The Proceedings of the National Academy of Sciences*, *The American Historical Review*, *Forecast*, and *The Journal of Social History*. Quantitative and historical analyses also ground my books, *Prejudice and the Old Politics: The Presidential Election of 1928*, *The Thirteen Keys to the Presidency* (co-authored with Ken DeCell), *The Keys to the White House*, and *White Protestant Nation: The Rise of the American Conservative Movement*.

3. My book, *White Protestant Nation*, was one of five finalists for the National Book Critics Circle Award for the best general nonfiction book published in America. My most recent book, co-authored with Richard Breitman, *FDR and the Jews*, was published

under the Belknap Imprint of the Harvard University Press, reserved for works of special significance and lasting impact. This book was an editor's choice book of the *New York Times* in 2013 and has been submitted for the Pulitzer Prize.

4. I have worked as a consultant or expert witness for both plaintiffs and defendants in more than eighty voting and civil rights cases. These include several cases in the state of Alabama and in many other southern states. In the U. S. Supreme Court case, *League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006), the majority opinion written by Justice Kennedy authoritatively cited my statistical work several times. My work includes more than a dozen cases for the United States Department of Justice and cases for many civil rights organizations. I have also worked as a consultant or expert witness numerous times in defending enacted plans from voting rights challenges.

II. Statement of Inquiry

5. I have been asked to examine the voting behavior of African Americans and whites in recent elections held in the state of Alabama. I have been asked to consider whether such voting is polarized along racial lines, with African Americans cohesive behind candidates of their choice and white voters bloc voting against these candidates. I have also been asked to consider the implications of polarized voting and turnout for African American voter opportunities

in alternative illustrative districts for the State House and State Senate. I have attached a CV and a table of cases with this testimony.

III. Summary of Opinions

6. I found that (1) voting is highly polarized along racial lines in recent general elections held in the state of Alabama, with African Americans nearly unanimous in their choice of candidates and whites strongly voting against those African American candidates of choice. I found that (2) African Americans invariably prefer Democratic candidates in general elections and that whites invariably prefer Republican candidates. Thus, party loyalty, which is tied to race, pulls African Americans and whites in different directions. I also found that (3) polarization between African Americans and whites in general elections is greater when the Democratic candidate is African American rather than white. Thus, the direct effect of an African American candidacy creates more racial polarization than would be accounted for by party alone. In addition, I found that (4) these patterns of racially polarized voting indicate that the African American voters would not have reasonable opportunities to elect candidates of their choice to office in districts dominated by whites. In such districts white bloc voting would prevail. Finally, I found that (5) these patterns of polarized voting combined with turnout for African Americans and whites further indicate that African Americans would have an excellent opportunity to elect candidates of their

choice in the plaintiffs' illustrative additional majority-minority districts.

IV. Data and Methods

7. The voting analysis in this report relies on standard data utilized in social science: county-level or precinct by precinct-level election returns for relevant elections, with candidates identified by race and voters categorized as either African Americans or whites. The category white will include some Latinos and others. These ethnic and racial groups comprise a small percentage of Alabama's registered voters and are not concentrated in a sufficient number of precincts for statistical analysis of their voting choices. Data was obtained from counsel and from the website of the Alabama Secretary of State. My understanding is that counsel obtained their information from the state and localities. The analysis utilizes the standard methodology of ecological regression that I have employed in some 80 previous voting rights cases. This procedure was recognized by the Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), and applied by the Court to single-member districts plans in *Quilter v. Voinovich*, 113 S.Ct 1149 (1993). My analysis based on these methods was cited in the recent *LULAC* Supreme Court case. It was also cited by the three judge court in the 2011 Illinois Congressional litigation: *Committee for a Fair and Balanced Map, et al. v. Illinois State Board of Elections, et al.* 835 F. Supp. 2d 563 – Dist. Court, ND Illinois 2011.

V. Results of Analysis: Elections Held State-wide

8. Table 1 reports the results of an analysis that examines recent elections held statewide in Alabama. Given the difficulty of matching precinct level registration statistics and election returns for the entire state, this analysis uses counties as the basis for statistical study.¹ There are a sufficient number of counties in Alabama (67) and a sufficient range in the percentage of African American registrants (from less than 1 percent to 85 percent) for reliable analysis. The results reported in Table 1 show that African American voters overwhelmingly backed the Democratic candidate in all six statewide elections studied, from 2004 to 2012. In turn, the results in Table 1 demonstrate that whites overwhelmingly bloc voted against the African American candidates of choice. As indicated in the final row of Table 1 black cohesion behind the Democratic candidate averaged 93 percent for all elections, whereas white support for these candidates averaged 24 percent for all elections. Thus, there is a high degree of polarization between the candidate choices of African Americans and whites in the six elections, equal to 69 percentage points (93% minus 24%).

¹ The registration and election data is often compiled with different precinct designations.

Table 1
Ecological Regression Results for Six General
Elections Held Statewide (* Indicates Winner)

Elections and Candidates	% African American Voters for Candidate	% of White Voters for Candidate
Black Versus White Elections		
2008 US Senate		
Figures (BD)	93%	19%
Sessions (WR) *	7%	81%
2008 President		
Obama (BD)	98%	20%
McCain (WR) *	2%	80%
2012 President		
Obama (BD)	91%	17%
Romney (WR) *	9%	83%
Mean Vote for Black Democrat	94%	19%
White Versus White Elections		
2004 President		
Kerry (WD)	91%	22%
Bush (WR) *	9%	77%
2008 Justice 1		
Paseur (WD)	90%	37%
Shaw (WR) *	10%	63%

2012 Chief Just		
Vance (WD)	95%	29%
Moore (WR) *	9%	71%
Mean Vote for White Democrats	92%	29%
Mean Vote for All Democrats	93%	24%

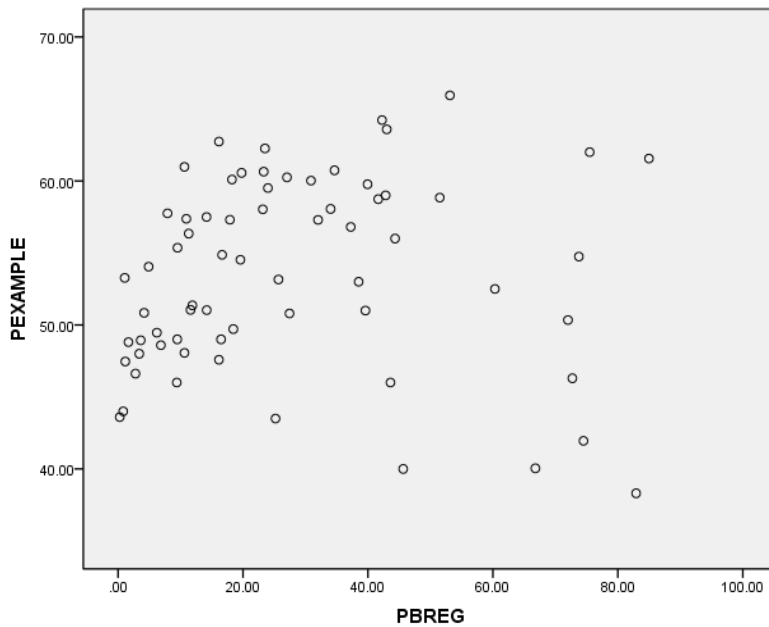
9. Table 1 also demonstrates that polarized voting exists in these general elections independent of party. That is, polarized voting is substantially stronger for elections with black Democrats than for elections with white Democrats. Black cohesion is only slightly lower for white versus white than black versus white elections (94 percent compared to 92 percent). However, white bloc voting against the African American candidate of choice is much more substantial in the black versus white than in the white versus white elections. As indicated in Table 1, only 19 percent of white voters backed black Democrats, whereas 29 percent of white voters backed white Democrats. The degree of polarization in black versus white elections is especially high at 75 percentage points (94% minus 19%), compared to 63 percentage points in white versus white elections (92% minus 29%).

10. Although there is a separate racial component in these results, the influence of party loyalty in the South is intimately tied to race. Democratic President Lyndon Johnson's backing for the Civil Rights

Act of 1964 and the Voting Rights Act of 1965 cemented the loyalties of African Americans to the Democratic Party and pushed white southerners towards the Republicans. The shift of white southern voters in the latter part of the 20th century from the most reliable of Democrats to the most loyal of Republicans is one of the most dramatic political transformations in U. S. history.

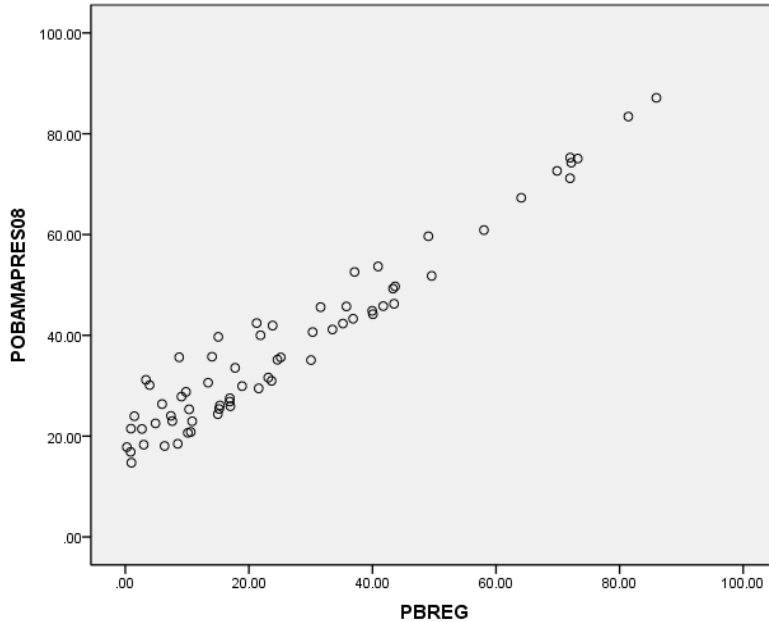
11. The reliability of the ecologically regression results is sustained by Charts 1 to 6 in Appendix I that portray for each of the six statewide elections the relationship between the percentage of African American registrants in a county and the percentage of the two-party vote for the Democratic candidate. In these “scattergrams” the X axis represents the percentage of African American registrants in each of the state’s counties and the Y axis the percentage of the two-party vote for the Democratic candidate. Each point on the scattergram represents the intersection of each precincts percentage of African Americans and its percentage of the two-party Democratic vote. Chart 7 of Appendix I displays an example of a relationship where there is a lack of polarization between African Americans and whites.

Chart 7: Sample Chart Showing a Lack of Polarization Between African American and White Registrants in Each County



The chart shows no tight linear relationship, but rather a diffuse cloud of counties. In contrast, charts 1 to 6 portray a very tight upward sweeping linear relationship between the racial composition of the counties and the distribution of the vote in the counties, as in Chart 2, which reflects the vote for and against Obama in the 2008 presidential election.

Chart 2: Relationship Between the Percent of African American Registrants in Each County and the Percent of the Vote for African American Democrat Obama, 2008 Presidential General



As the African American composition of a county increases, so does its vote for the Democratic candidate in each of six election. This close relationship displayed in Charts 1 to 6 is very rarely found in social science. It should also be noted that as compared to African American Democrats, the charts for white Democrats are pitched higher on the Y axis and slowly a slightly less tight relationship between race and the vote emerges. This reflects the greater white vote for white Democratic candidates, compared to black Democratic candidates.

12. Charts 1 to 6 also demonstrate that counties are remarkably consistent in voting patterns. There is no indication in these charts of substantial differences in various parts of the state in polarized voting between African Americans and whites. That is, there are no groups of counties that stand out as markedly different from the overall relationships between race and voting displayed in the charts across the state. Rather counties are tightly clustered in a linear pattern for a variety of elections across three election cycles. The results are especially consistent across counties for the three elections with African American candidates.

13. The ecological regression results are additionally confirmed by the scrutiny of exit polls. These polls are based on a methodology that is strictly independent of ecological regression. Exit polls involve no analysis of election returns; they are based on responses to questions presented to voters upon leaving the polls on Election Day. As indicated in Table 2, exit polls for Alabama are available for three black vs. white and one white versus white of the six statewide elections studied. These results show nearly the same pattern of polarized voting as the ecological regression results. In fact, the exit polls show a higher level of polarization than the ecological regression results for each of the four elections included in both Table 1 and Table 2. The exit poll results reported in Table 2 also confirm that polarization is greater in elections with black Democrat as compared to elections with white Democrats – 83 percentage points (95% minus 12%) versus 74 percentage points (93% minus 19%).

VI. Results of Analysis: Statewide Elections in Key Counties

14. Tables 3 to 5 report the results of an analysis that examines recent statewide elections within the three individual counties for which illustrative additional districts are presented: Jefferson, Madison, and Montgomery counties. I have been able to match most precinct level registration and election results for all contests presented above from 2008 and 2012. The results reported in Tables 3 to 5 show patterns of racial polarization quite similar to those found for the statewide county by county analysis. In each election in each county, African American voters unite in virtual unanimity behind their candidates of choice, whereas a substantial majority of white voters vote against these candidates.

Table 2
Exit Poll Results for Four General Elections
Held Statewide (* Indicates Winner)

Elections and Candidates	% African American Voters for Candidate	% of White Voters for Candidate
Black Versus White Elections		
2008 US Senate		
Figures (BD)	92%	11%
Sessions (WR) *	8%	89%
2008 President		
Obama (BD)	98%	10%
McCain (WR) *	2%	90%

2012 President		
Obama (BD)	95%	15%
Romney (WR) *	5%	85%
Mean Vote for Black Democrat	95%	12%
White Versus White Election		
2004 President		
Kerry (WD)	93%	19%
Bush (WR) *	7%	81%
Mean Vote for All Democrats	95%	14%
Source: CNN.com. Results reflect only two-party totals.		

15. Again, white bloc voting against the candidates of choice of black voters is strongest in elections with black candidates. In Jefferson County, Table 3 demonstrates that a mean of 19 percent of white voters backed the black candidate of choice of black voters for a polarization rate of 81 percent. A mean of 33 percent of white voters backed the white candidate of choice of black voters in Jefferson County, for a polarization rate of 67 percent. For all five elections in Jefferson County, a mean of 25 percent of white voters backed the candidate of choice of black voters, for a polarization rate of 75 percent.

16. In Madison County, Table 4 demonstrates that a mean of 24 percent of white voters backed the black candidate of choice of black voters for a

polarization rate of 76 percent. A mean of 36 percent of white voters backed the white candidate of choice of black voters in Madison County, for a polarization rate of 64 percent. For all five elections in Madison County, a mean of 29 percent of white voters backed the candidate of choice of black voters, for a polarization rate of 71 percent.

17. In Montgomery County, Table 5 demonstrates that a mean of 20 percent of white voters backed the black candidate of choice of black voters for a polarization rate of 80 percent. A mean of 41 percent of white voters backed the white candidate of choice of black voters in Montgomery County, for a polarization rate of 59 percent. For all five elections in Montgomery County, a mean of 28 percent of white voters backed the candidate of choice of black voters, for a polarization rate of 72 percent.

Table 3

Ecological Regression Results Within Jefferson County for Five General Elections Held Statewide

Elections and Candidates	% African American Voters for Candidate	% of White Voters for Candidate
Black Versus White Elections		
2008 US Senate		
Figures (BD)	100%	17%
Sessions (WR) *	0%	83%

2008 President		
Obama (BD)	100%	21%
McCain (WR) *	0%	80%
2012 President		
Obama (BD)	100%	20%
Romney (WR) *	0%	83%
Mean Vote for Black Democrat	100%	19%
White Versus White Elections		
2008 Justice 1		
Paseur (WD)	100%	28%
Shaw (WR) *	0%	72%
2012 Chief Just		
Vance (WD)	100%	38%
Moore (WR) *	0%	62%
Mean Vote for White Democrats	100%	33%
Mean Vote for All Democrats	100%	25%

Table 4
Ecological Regression Results Within Madison
County for Five General Elections Held Statewide

Elections and Candidates	% African American Voters for Candidate	% of White Voters for Candidate
Black Versus White Elections		
2008 US Senate		
Figures (BD)	100%	19%
Sessions (WR) *	0%	81%
2008 President		
Obama (BD)	100%	27%
McCain (WR) *	0%	83%
2012 President		
Obama (BD)	100%	26%
Romney (WR) *	0%	84%
Mean Vote for Black Democrat	100%	24%
White Versus White Elections		
2008 Justice 1		
Paseur (WD)	100%	39%
Shaw (WR) *	0%	61%
2012 Chief Just		
Vane (WD)	100%	33%
Moore (WR) *	0%	67%
Mean Vote for White Democrats	100%	36%
Mean Vote for All Democrats	100%	29%

Table 5**Ecological Regression Results Within Montgomery County for Five General Elections Held Statewide**

Elections and Candidates	% African American Voters for Candidate	% of White Voters for Candidate
Black Versus White Elections		
2008 US Senate		
Figures (BD)	100%	17%
Sessions (WR) *	0%	81%
2008 President		
Obama (BD)	100%	22%
McCain (WR) *	0%	83%
2012 President		
Obama (BD)	100%	20%
Romney (WR) *	0%	84%
Mean Vote for Black Democrat	100%	20%
White Versus White Elections		
2008 Justice 1		
Paseur (WD)	100%	41%
Shaw (WR) *	0%	59%
2012 Chief Just		
Vane (WD)	100%	41%
Moore (WR) *	0%	59%
Mean Vote for White Democrats	100%	41%
Mean Vote for All Democrats	100%	28%

18. The reliability of the ecologically regression results is sustained by Charts included in Appendices 2 to 4, that portray the relationship between the percentage of African American registrants within individual precincts and the percentage of the two-party vote for the Democratic candidate for each of the five elections and three counties. These charts demonstrate across five elections and three counties that even for units as small as precincts there is a very tight linear relationship between the racial composition of the precincts and the distribution of the vote in the precincts. The only substantial exception occurs for a few heavily white precincts in Jefferson County that provided a majority of their votes for the candidate of choice of black voters.

19. The estimates in Tables 3 to 5 of one hundred percent black cohesion does not mean that not a single voter diverged from the pattern shown. Estimates of zero and one hundred do sometimes occur at the far extremes in ecological regression analysis and indicate extremely high cohesion or bloc voting. A cohesion finding of 100 percent or very close to 100 percent is confirmed by the precinct-level charts in Appendices 2 to 4, which show that as the black registration percentage in a precinct approaches 100 percent, the vote for the candidate of choice of black voters likewise approaches 100 percent. Similar results emerged for some contests in the 2003 analyses in *LULAC v. Perry* and in the 2011 analyses in *Committee for a Fair and Balanced Map, et al. v. Illinois State Board of Elections, et al.*

VII. Results of Analysis: State House and Senate Elections

20. Table 6 reports the results of ecological regression analysis for elections held within State House and State Senate elections in areas of interest within Alabama.² These results are similar to those found for elections held statewide, showing both overwhelming African American cohesion behind candidates of their choice and substantial white bloc voting against these candidates. As indicated in the final row of Table 6 black cohesion behind the Democratic candidate averaged 94 percent for all elections, whereas white support for these candidates averaged 27 percent for all elections. Thus, the degree of polarized voting in the six elections is 67 percentage points (94% minus 27%), very close to the 69 percentage points found for the six elections held statewide. Once again, white bloc voting against the African American candidate of choice is much more substantial in the black versus white than in the white versus white elections. As indicated in Table 6, only 15 percent of white voters backed African American Democrats, whereas 34 percent of white voters backed the white Democrat. The degree of polarization in black versus white elections is 82 percentage points (97% minus 15%),

² For districts with multiple counties it was not possible always to match election returns with regression data. In no case, however, was more than a single county not included. Also, there are additional elections for which matching information was not available.

compared to 58 percentage points in white versus white elections (92% minus 34%).

VIII. Results of Analysis: Native American and Hispanic Voting

21. There is an insufficient concentration of Native Americans or Hispanics in the state of Alabama for ecological regression analysis. However, there is evidence pointing to the cohesion of these two groups with the choices of African Americans in general elections. With respect to Native American voting some indication of preferences is provided by the McIntosh High School precinct in Senate District 22, Washington County. This precinct has a Native American plurality with 41 percent of registered voters. African Americans comprise another 23 percent of registrants for a combined Native American African American majority of 64 percent. In the 2006 general election for State Senate this precinct cast 75 percent of its vote for the Democrat Lindsay and in the 2010 general election for State Senate it cast 87 percent of its vote for the Democrat Keahey. These results point to a voting coalition of Native Americans and African Americans given that about 60 percent of white voters overall backed the Republican candidates in these two elections.

Table 6
Ecological Regression Results for General
Elections in State House & Senate Districts
 (* Indicates Winner)

Elections and Candidates	% African American Voters for Candidate	% of White Voters for Candidate
Black Versus White Elections		
2009 Senate D9		
Hall (BD)	100%	17%
Sanford (WR) *	0%	83%
2010 House D84		
Forte (BD) *	90%	0%
Perrin (WR)	10%	100%
2010 House D85		
Grimsley (BD) *	100%	29%
Singleton (WR)	0%	71%
Mean Vote for Black Democrat	97%	15%
White Versus White Elections		
2006 Senate D22		
Lindsey (WD) *	79%	41%
McMillan (WR)	21%	59%
2010 Senate D7		
Enfinger (WD)	88%	24%
Sanford (WR) *	12%	76%

2010 Senate D11		
Fielding (WD) *	100%	34%
Robbins (WR)	0%	66%
2010 Senate D22		
Keahey (WD) *	91%	40%
Joyner (WR)	9%	60%
2010 House D73		
Hubbard (WD) *	100%	30%
Grimes (WR)	0%	70%
Mean Vote for White Democrats	92%	34%
Mean Vote for All Democrats	94%	27%

22. With respect to Hispanics, there are no precincts comparable to McIntosh High School for Indians. However, it is well established that with the exception of Cuban-Americans, Hispanics are overwhelmingly Democratic in their choice of candidates. (see, Mark Hugo Lopez and Paul Taylor, *Latino Voters in the 2012 Election*, Pew Research Hispanic Center, November 12, 2012 (<http://www.pewhispanic.org/2012/11/07/latino-voters-in-the-2012-election/>)). Recent Census data indicates that the Hispanic population of Alabama is almost entirely non-Cuban. The Census reports country of origin among foreign born Hispanics. In Alabama, the percentage with origins in Cuba is an inconsequential 1.4 percent. (Table B05006, *Place of Birth for the Foreign-Born Population*, 2007-2011, American Community Survey, Three Year

Estimates). Given that these foreign born would also comprise most parents of native born Hispanics, the overall Hispanic population should closely reflect the minimal percentage reported above.

IX. Results of Analysis: African American Voter Opportunities

23. The consideration of African American and white turnout in Alabama provides additional perspective on these polarized voting results. Today African American participation in elections in Alabama is at least comparable and likely above white participation. According to statistics compiled by the Alabama Secretary of State, African Americans now comprise some 26.9 percent of active registered voters in the state. This is higher than the African American percentage of the voting age population, which is 25.2 percent. For the most recent elections, held in 2012, the percentage of African Americans among voters was higher yet at 28 percent according to exit poll data. Estimation of the percentage of African American voters in 2012 based on ecological regression yields slightly higher results at some 30 percent. However, as indicated below, African American voter opportunities in districts that are above 46 percent African American voting age population are by no means dependent on equal or higher African American turnout, given the extremely high cohesion of this voter group.

24. These polarized voting and turnout results demonstrate that African Americans in Alabama would find their opportunities to elect candidates of their choice and participate fully in the political process impeded in state legislative districts dominated by whites. However, the very high degree of black cohesion combined with white crossover demonstrates that it is not necessary to draw super-majority African American districts to provide African Americans a reasonable opportunity to elect candidates of their choice to the state legislature.

25. Analysis demonstrates that all three of the illustrative alternative districts attached to this report would provide African American voters an excellent opportunity to elect candidates of their choice. Table 7 presents the demography of the three districts and Table 8 presents projections of the vote for African American candidates of choice based on county-specific turnout rates and the levels of black cohesion and white crossover voting presented in Tables 3-5. The results reported in Table 8 show that the candidate of choice of African American voters would be a clear winner, even if the analysis is only limited to elections with black candidates. These analyses focus on general elections. With respect to primary elections, African Americans are overwhelmingly Democratic and whites overwhelmingly Republican. African Americans in such districts would thus constitute the great majority of primary voters and be able to nominate their candidate of choice (a candidate of choice of African American voters could be of any race).

26. These findings are sustained by the actual results of elections in Alabama. There are three districts in the current State House plan that are equal to or greater than 40 percent African American in their voting age population, but less than 50 percent. The African American voting age populations in these districts range from 46 percent to 49.7 percent, close to the percentages for the illustrative districts. As indicated in Table 9, Democrats won all three districts and African American candidates prevailed in two of the three districts in 2010, a bad year for Democrats in Alabama and across the nation. These findings regarding opportunities for African American voters in below 50 percent but above 40 percent African American VAP are comparable to my recent findings for other states, including North Carolina and Illinois.³

³ See declaration of Allan Lichtman in *North Carolina Branches of the NAACP et al. v. State of North Carolina, et al.* Civil Action No: 11-CV-01640, in the North Carolina General Court of Justice, County of Wake, Superior Court Division and Lichtman, Testimony Before the Senate and House Redistricting Committees, Illinois, May 24, 2011, http://www.ilhousedems.com/redistricting/?page_id=417.

Table 7
Demographic Analysis of Illustrative
Alternative State Legislative Districts

District	% Minority	% Black	% Black Voting Age
Jefferson Co. House	63.7%	55.7%	53.0%
Montgomery Co. House	55.6%	50.4%	46.6%
Madison Co. Senate	58.0%	48.4%	46.5%

Table 8
Projected Votes for Candidate of Choice of
Black Voters, Illustrative Alternative Districts

District	Black Vote for Preferred Candidate of Black Voters	White Vote for Preferred Candidate of Black Voters	Total Vote for Preferred Candidate of Black Voters
Jefferson Co. House	52%	13%	65%

Montgomery Co. House	40%	17%	57%
Madison Co. Senate	43%	16%	59%
District	Black Vote for Preferred Candidate of Black Voters	White Vote for Preferred Candidate of Black Voters	Total Vote for Preferred Candidate of Black Voters
Jefferson Co. House	52%	10%	62%
Montgomery Co. House	40%	14%	54%
Madison Co. Senate	43%	11%	54%

27. Plaintiffs in this case have presented illustrative partial plans showing that it is possible to create additional African American opportunity districts in both the House and the Senate (see also, Report of Bill Cooper submitted for this litigation). Those illustrations, which are the basis of the projections above, are attached as Appendix VI of this report.

Table 9
Election Results in State Legislative
Districts Below 50% African American
VAP and Above 40% African American VAP,
2010 General Election

Current House District	African American VAP % 2010 Census	Winning Candidate in 2010	
HD 73	46.0%	Hubbard (WD)	
HD 84	49.7%	Forte (BD)	
HD 85	46.1%	Grimsley (BD)	

**Appendix I: Charts Showing Relationship
Between Percentage of African American
Registrants in Counties and the Percentage of
the Vote for Candidate of Choice of African
American Voters as Demonstrated In Table 1**

**Chart 1: Relationship Between the Percent
of African American Registrants in Each
County and the Percent of the Vote for White
Democrat Kerry, 2004 Presidential General**

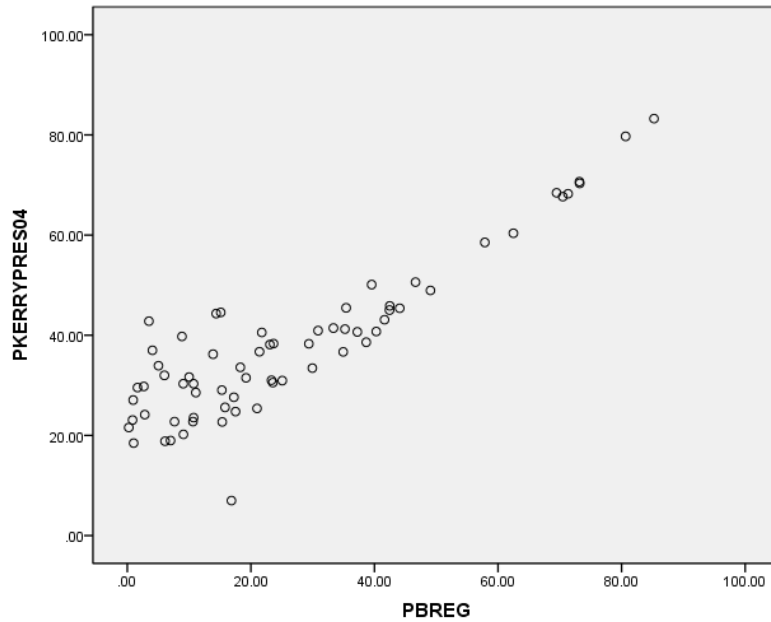


Chart 2: Relationship Between the Percent of African American Registrants in Each County and the Percent of the Vote for African American Democrat Obama, 2008 Presidential General

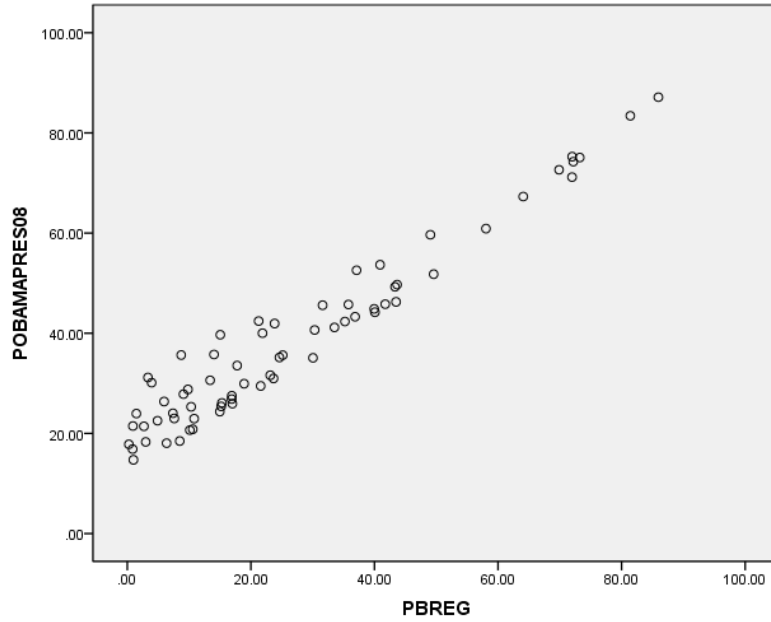


Chart 3: Relationship Between the Percent of African American Registrants in Each County and the Percent of the Vote for African American Democrat Figures, 2008 US Senate General

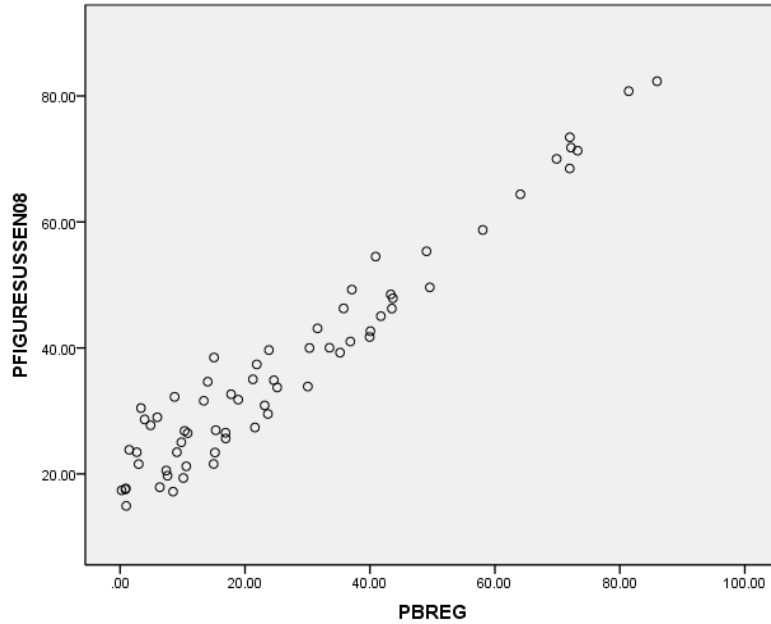


Chart 4: Relationship Between the Percent of African American Registrants in Each County and the Percent of the Vote for White Democrat Paseur, 2008 Justice 1 General

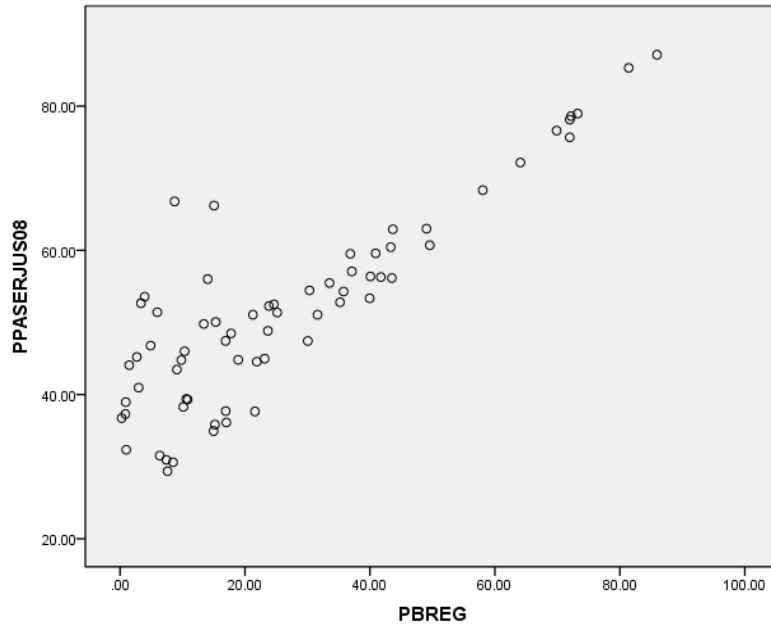


Chart 5: Relationship Between the Percent of African American Registrants in Each County and the Percent of the Vote for African American Democrat Obama, 2012 Presidential General

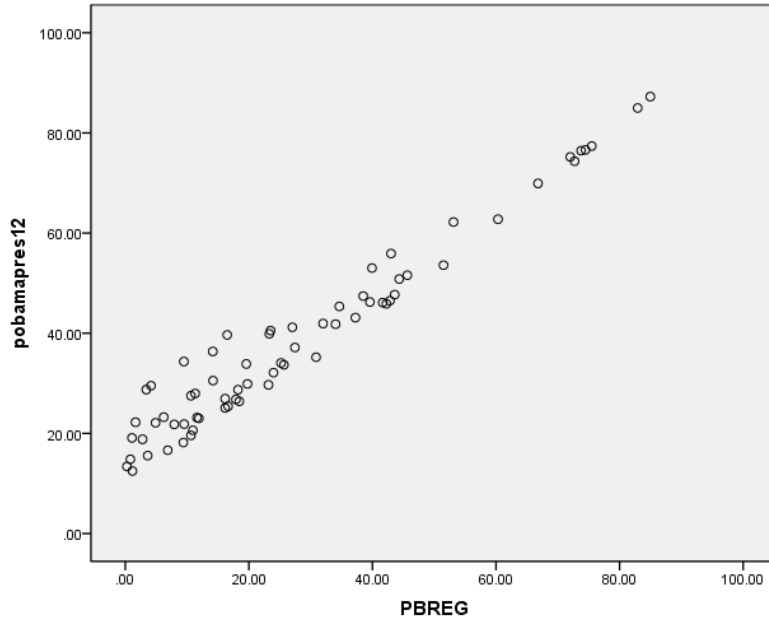


Chart 6: Relationship Between the Percent of African American Registrants in Each County and the Percent of the Vote for White Democrat Vance, 2012 Chief Justice General

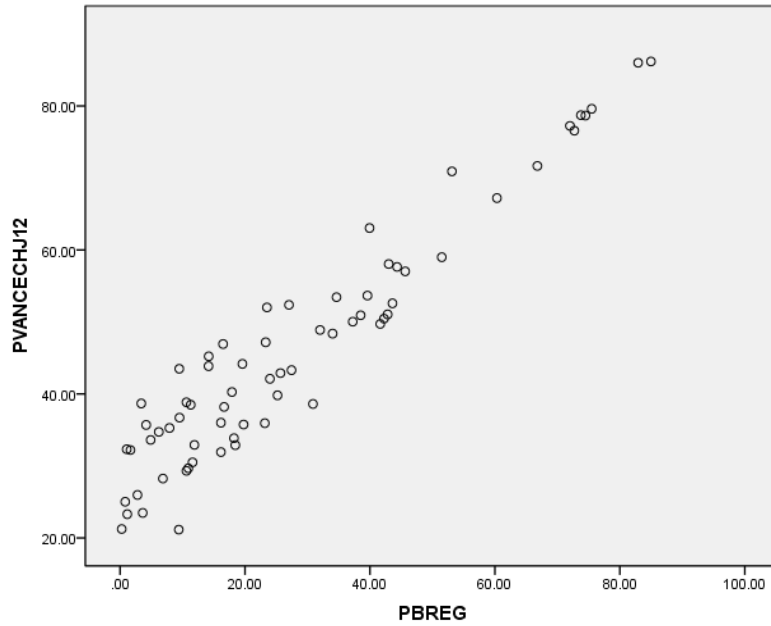
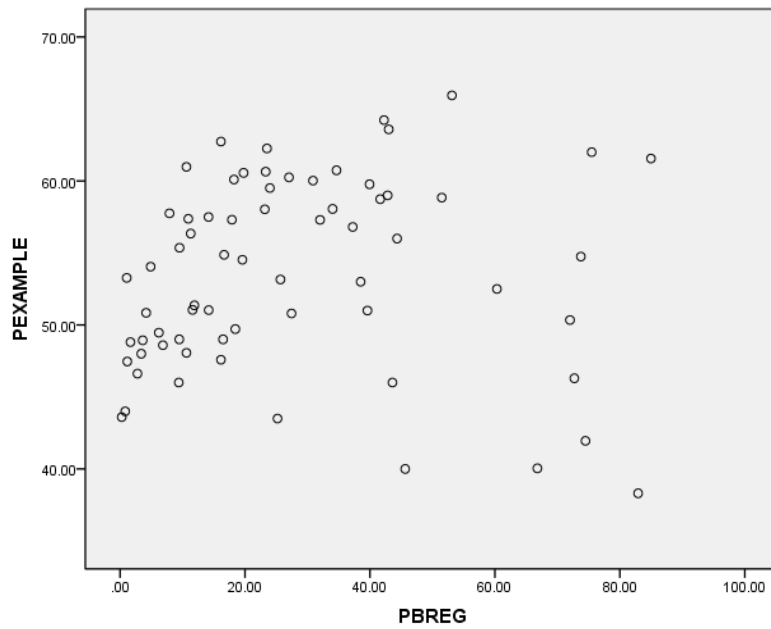


Chart 7: Sample Chart Showing a Lack of Polarization Between African American and White Registrants in Each County



**Appendix II: Charts Showing Relationship
Between Percentage of African American
Registrants in Precincts and the Percentage
of the Vote for Candidate of Choice of African
American Voters in Jefferson County as
Demonstrated In Table 3**

**Chart Jefferson1: Jefferson County Relation-
ship Between the Percent of African American
Registrants in Each County and the Percent of
the Vote for African American Democrat
Obama, 2008 Presidential General**

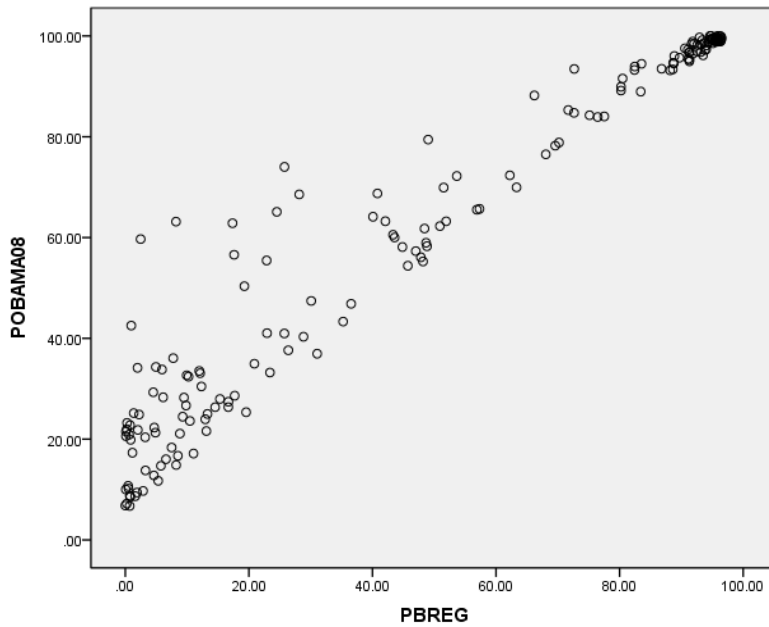
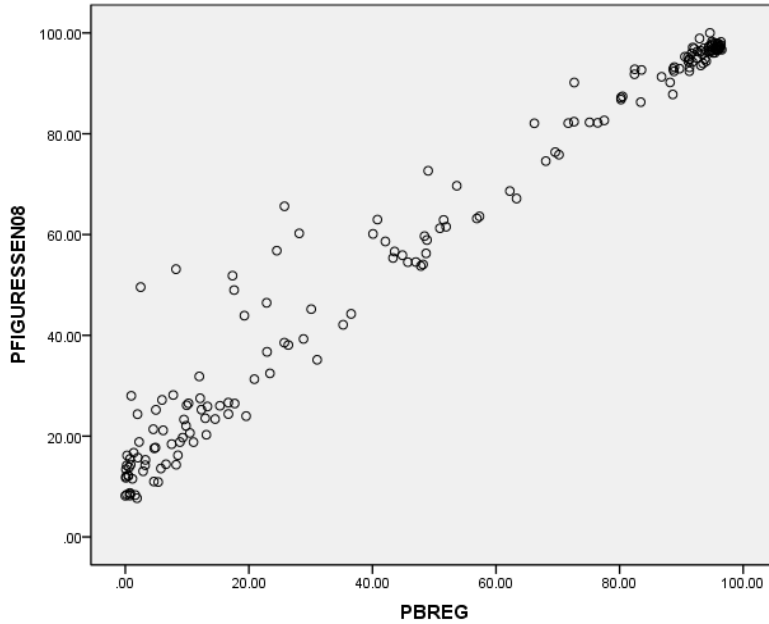


Chart Jefferson2: Jefferson County: Relationship Between the Percent of African American Registrants in Each County and the Percent of the Vote for African American Democrat Figures, 2008 US Senate General



**Chart Jefferson3: Jefferson County: Relationship Between the Percent of African American Registrants in Each County and the Percent of the Vote for White Democrat Paseur, 2008
Justice 1 General**

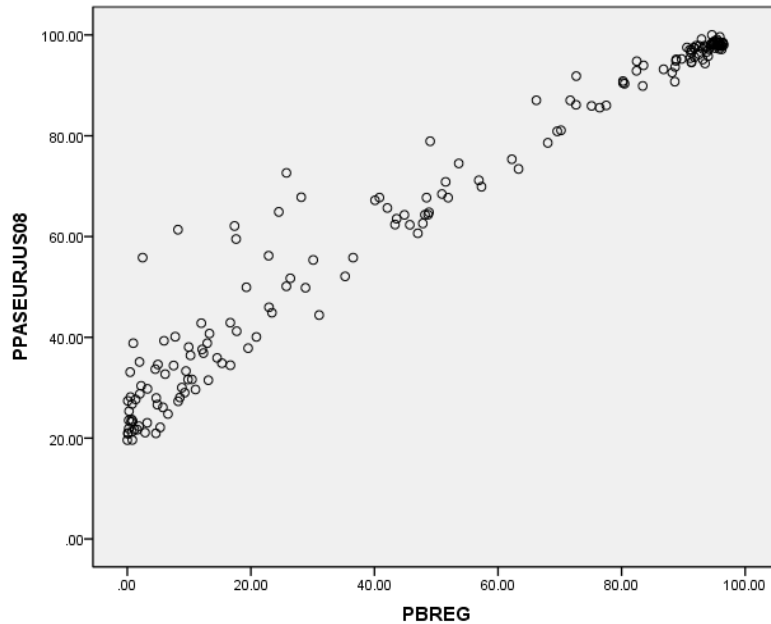


Chart Jefferson4: Jefferson County: Relationship Between the Percent of African American Registrants in Each County and the Percent of the Vote for African American Democrat Obama, 2012 Presidential General

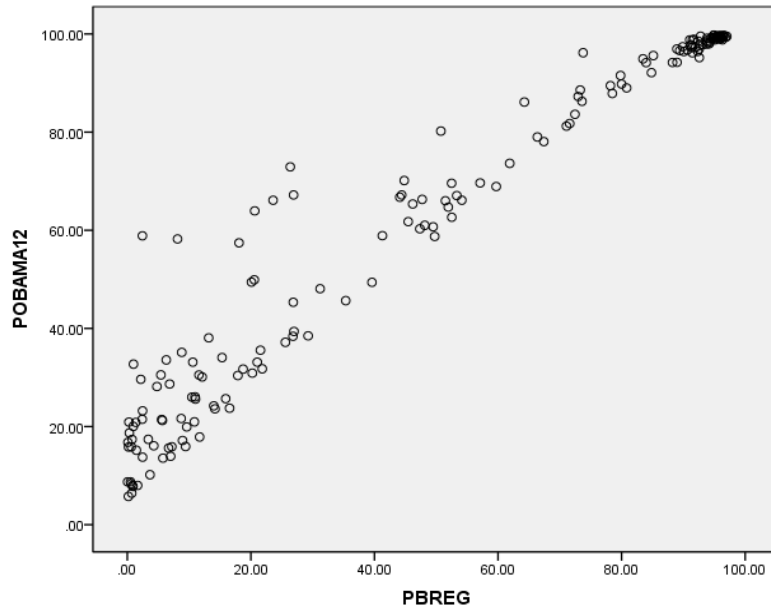
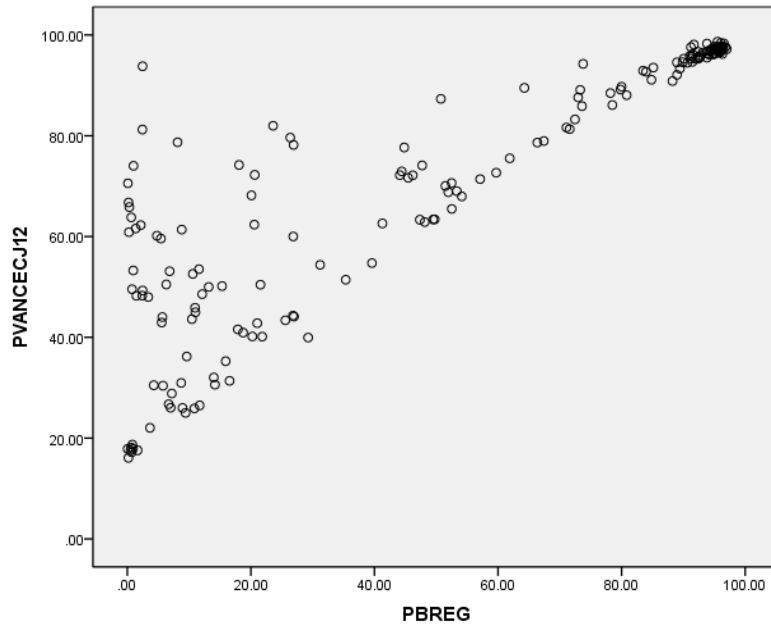


Chart Jefferson5: Jefferson County: Relationship Between the Percent of African American Registrants in Each County and the Percent of the Vote for White Democrat Vance, 2012 Chief Justice General



**Appendix III: Charts Showing Relationship
Between Percentage of African American
Registrants in Precincts and the Percentage
of the Vote for Candidate of Choice of African
American Voters in Madison County as
Demonstrated In Table 4**

**Chart Madison1: Madison County Relation-
ship Between the Percent of African American
Registrants in Each County and the Percent of
the Vote for African American Democrat
Obama, 2008 Presidential General**

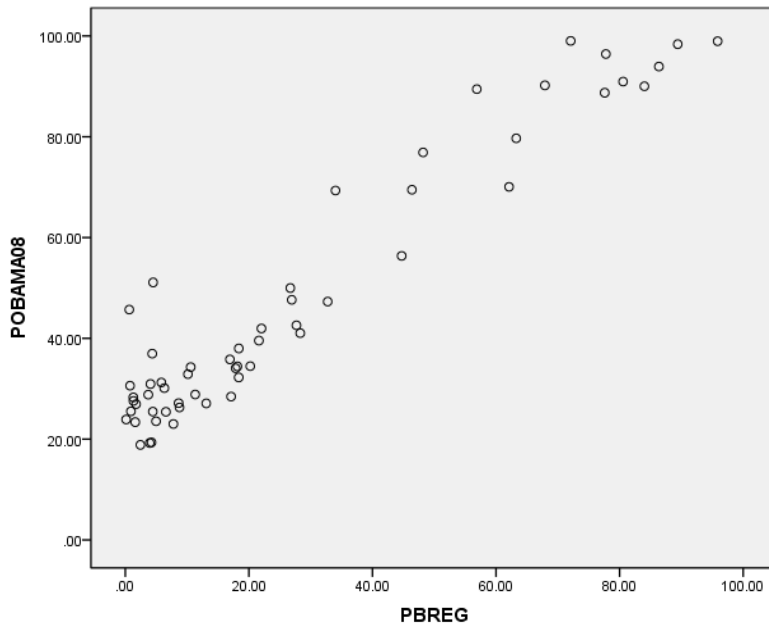
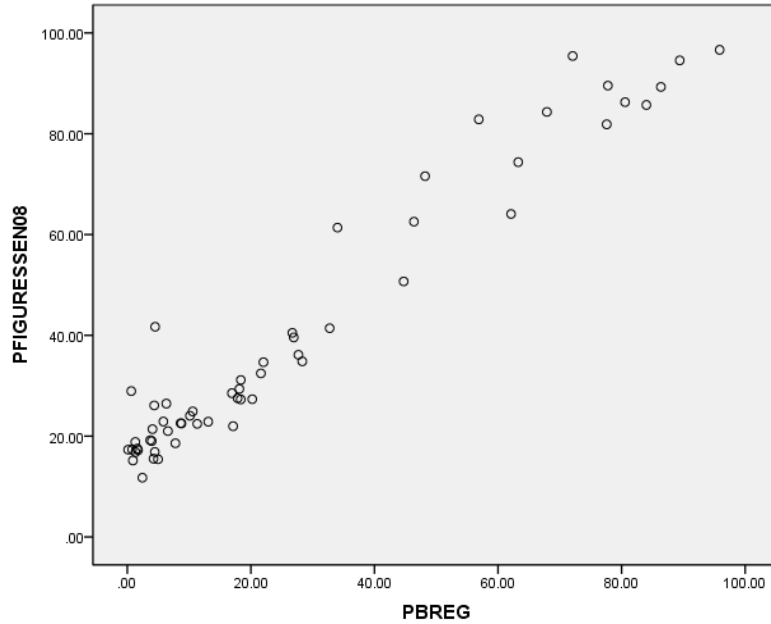


Chart Madison2: Madison County: Relationship Between the Percent of African American Registrants in Each County and the Percent of the Vote for African American Democrat Figures, 2008 US Senate General



**Chart Madison3: Madison County: Relationship Between the Percent of African American Registrants in Each County and the Percent of the Vote for White Democrat Paseur, 2008
Justice 1 General**

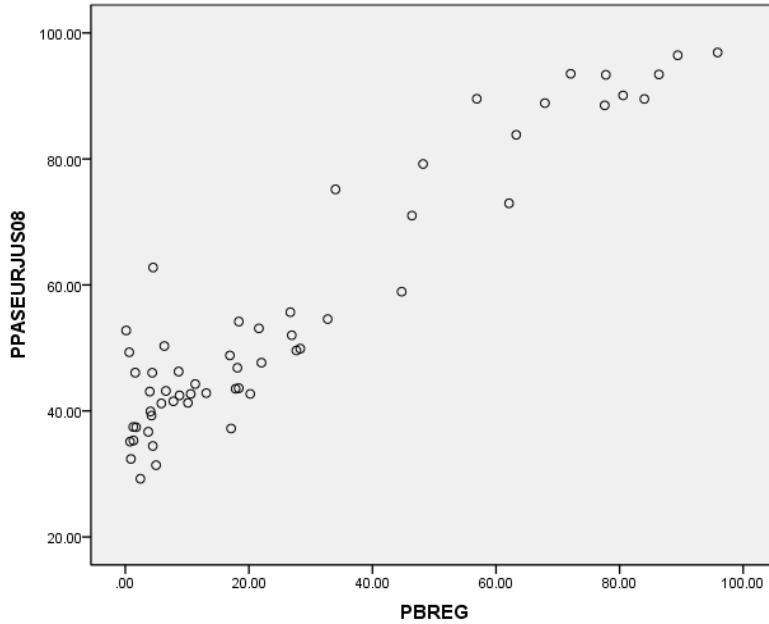


Chart Madison4: Madison County: Relationship Between the Percent of African American Registrants in Each County and the Percent of the Vote for African American Democrat Obama, 2012 Presidential General

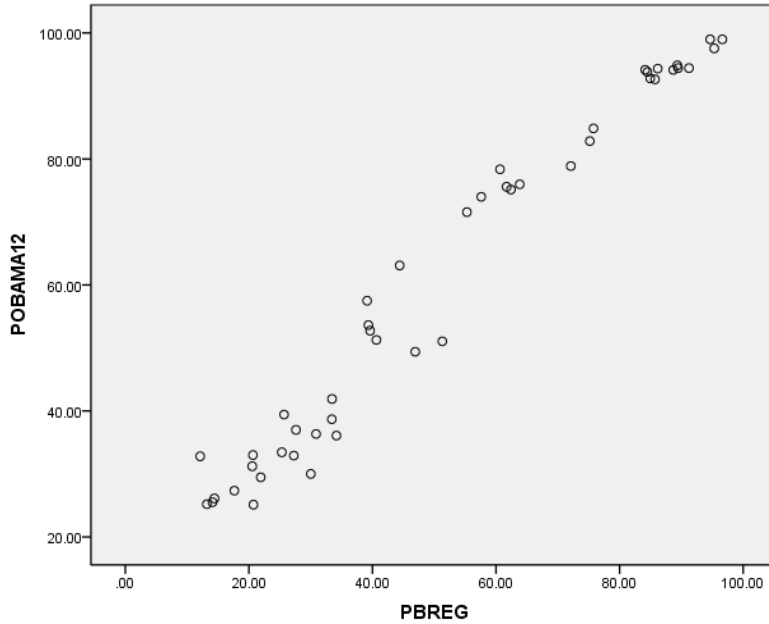
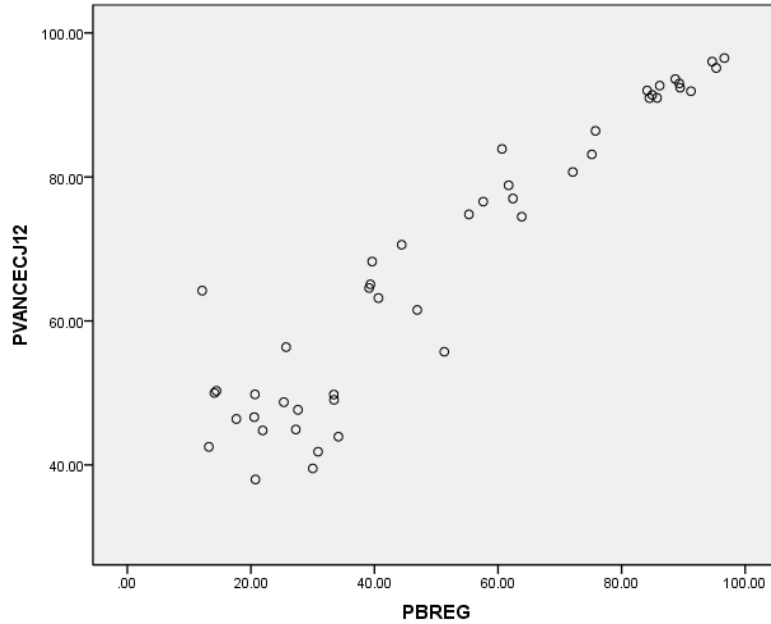
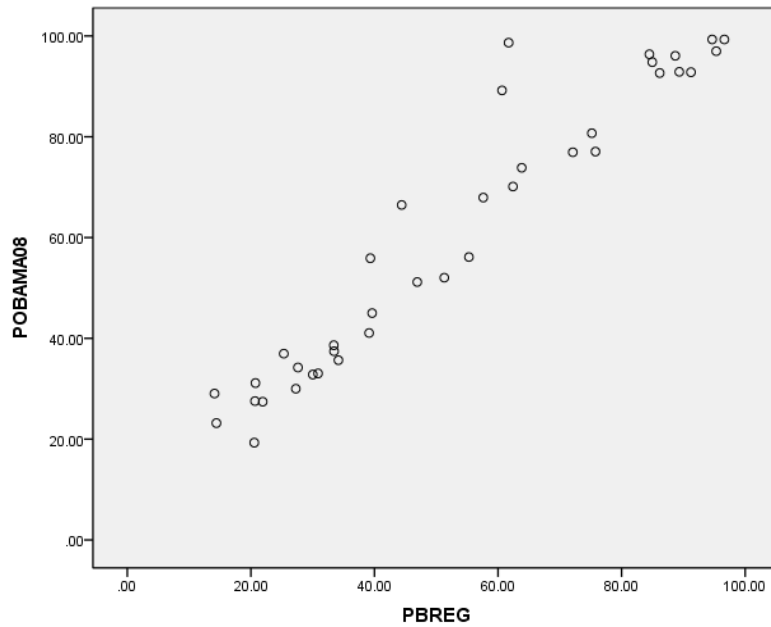


Chart Madison5: Madison County: Relationship Between the Percent of African American Registrants in Each County and the Percent of the Vote for White Democrat Vance, 2012 Chief Justice General

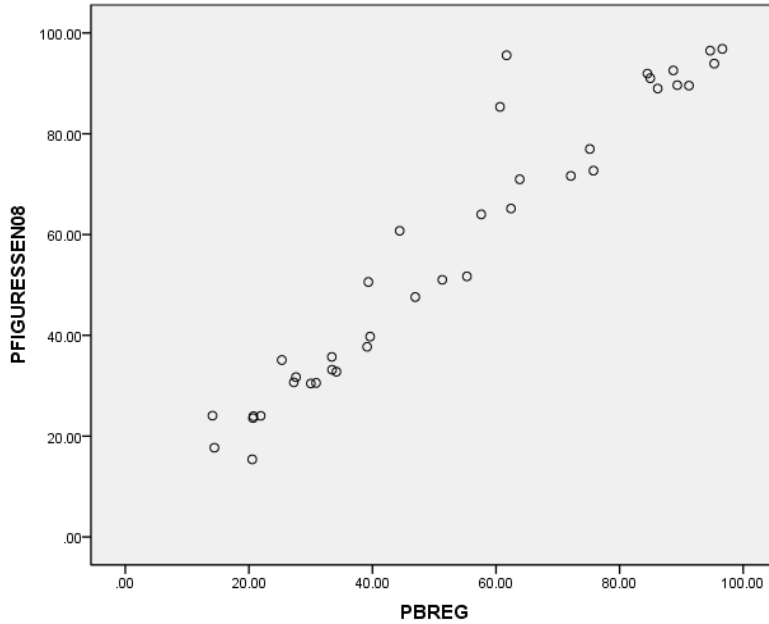


**Appendix IV: Charts Showing Relationship
Between Percentage of African American
Registrants in Precincts and the Percentage
of the Vote for Candidate of Choice of African
American Voters in Montgomery County as
Demonstrated In Table 5**

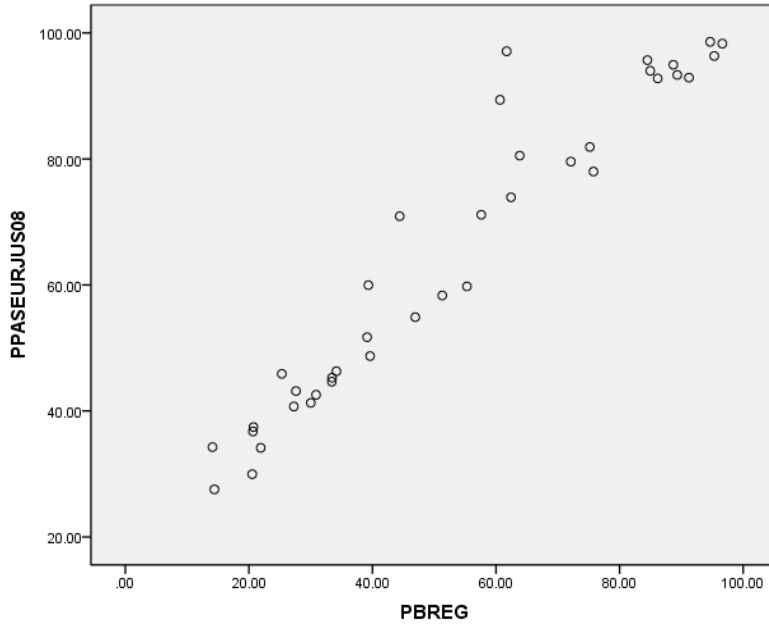
**Chart Montgomery1: Montgomery County
Relationship Between the Percent of African
American Registrants in Each County and the
Percent of the Vote for African American
Democrat Obama, 2008 Presidential General**



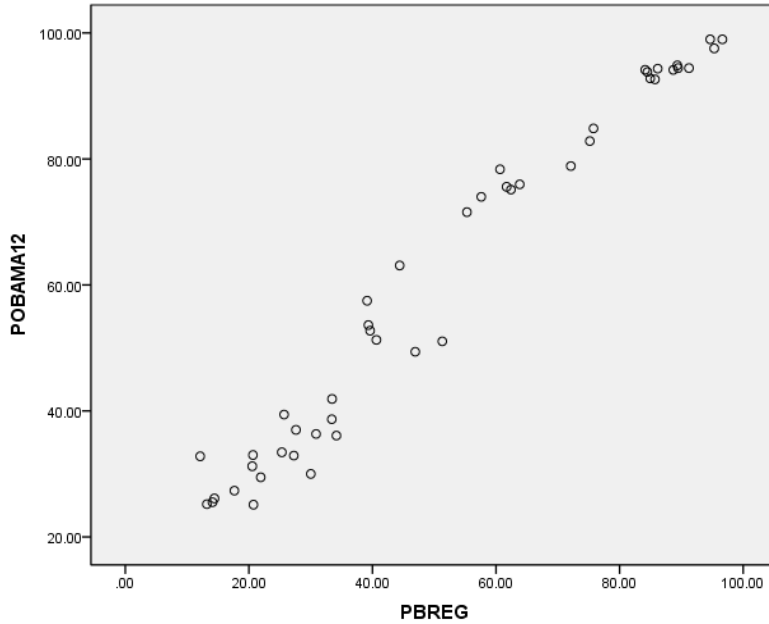
**Chart Montgomery2: Montgomery County:
Relationship Between the Percent of African
American Registrants in Each County and the
Percent of the Vote for African American
Democrat Figures, 2008 US Senate General**



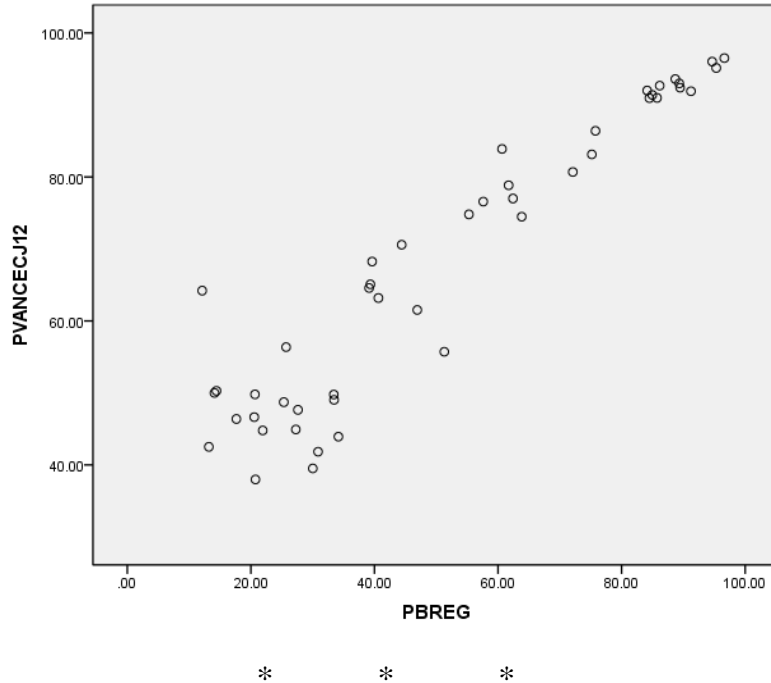
**Chart Montgomery3: Montgomery County:
Relationship Between the Percent of African
American Registrants in Each County and the
Percent of the Vote for White Democrat
Paseur, 2008 Justice 1 General**



**Chart Montgomery4: Montgomery County:
Relationship Between the Percent of African
American Registrants in Each County and the
Percent of the Vote for African American
Democrat Obama, 2012 Presidential General**



**Chart Montgomery5: Montgomery County:
Relationship Between the Percent of African
American Registrants in Each County and the
Percent of the Vote for White Democrat Vance,
2012 Chief Justice General**



LEGISLATIVE REDISTRICTING COMMITTEE

9th HEARING

OCTOBER 6, 2011

Birmingham, Alabama

APPEARANCES

SENATOR GERALD DIAL
REPRESENTATIVE JIM McCLENDON
SENATOR VIVIAN FIGURES
Dorman Walker, Hearing Officer
Balch & Bingham, LLP
105 Tallapoosa Street
Suite 200
Montgomery, Alabama 36104
Donna Armstrong, CCR #550
Certified Court Reporter

PROCEEDINGS

* * *

REPRESENTATIVE SCOTT: Thank you for that. And now I will make sure I go to the website and check. And there was one other point that Senator Dunn made, and that is the integrity of the current minority representation throughout the state based upon population.

Two particular, I guess, redistricting issues; one involving cracking, where you have a disbursement of minorities within the districts so that you, potentially,

lose any effectiveness in selecting minority representation.

And then, the other issue is one of packing, where you pack so many minorities in to one district that you create or you limit the number of representatives that can win – win seats in either the House or the Senate.

Do you have some plan to deal with those issues of cracking and packing?

MR. WALKER: Certainly. Certainly. Thank you. And that is a very good point.

The – as you know, any plan that is passed by the Legislature has to be submitted to the Attorney General

* * *

MR. WALKER: No. I'm sure – you have asked two questions: Has the Committee done any preliminary maps? And are there any plans being drawn? The answer to the first one is no. The answer to second one is I'm sure there are lots of people drawing maps, but I have not seen those. And I don't know – I don't know who drew that map, but no – no plan has been given to me to review, and I'm not aware of – neither Senator Dial or Representative McClendon has seen a proposed plan.

REPRESENTATIVE MERIKA COLEMAN: Okay. Well, then, when will – as there – you know, I'm going – because we are going on record and even if we have

to repeat things over and over again, I want to make sure that it goes on record, some of the same things. The packing and cracking I'm very concerned about.

MR. WALKER: Certainly.

REPRESENTATIVE MERIKA COLEMAN: And making sure we that we don't pack all African Americans in a geographic area – or a geographic districts in addition to cracking it up so much that there is no opportunity for a minority person to end up within their district. I want to go on record saying that. But also, as we consider districts, as some of my colleagues have already stated, trying to keep those cities intact.

* * *

ALABAMA LEGISLATURE
PERMANENT JOINT
LEGISLATIVE COMMITTEE
FOR REAPPORTIONMENT
IN RE: PUBLIC HEARING
OCTOBER 13, 2011 DEMOPOLIS, ALABAMA

PROCEEDINGS held in the above-styled cause, and moderated by the Honorable Dorman Walker, at the Demopolis City Civic Center, 501 North Commissioner Avenue, Demopolis, Alabama, on Thursday, October 13, 2011, commencing at 3:00 p.m.; and reported by Virginia Denese Barrett, Court Reporter and Commissioner for the State of Alabama at Large.

APPEARANCES:

AS HEARING OFFICER:

Mr. Dorman Walker
BALCH & BINGHAM, LLP
105 Tallapoosa Street, Suite 200
Montgomery, Alabama 36104.

COMMITTEE MEMBERS:

Senator Gerald Dial, District 13, Co-Chair
Representative Jim McClendon, District 50, Co-Chair
Senator Vivian Davis Figures, District 33, At Large

PROCEEDINGS

* * *

MR. ALBERT TURNER: I know you've got a six o'clock meeting in Tuscaloosa, and I ain't going to take all your time. But I just want to make sure that the other point is that this racial thing. We don't want these Republicans that's going to be in charge of the legislature to draw all these black people into six or seven districts and leave all these other thirty or twenty-nine senate districts to white Republicans or conservative white Democrats. We want to make sure that we have no race packing at all. And that is one of the criteria that the Department of Justice looks at, that there be no race packing.

* * *

LEGISLATIVE HEARINGS ON
REDISTRICTING LOCATIONS

TUSCALOOSA, ALABAMA

OCTOBER 13, 2011

IN RE: LEGISLATIVE HEARINGS ON REDIS-
TRICTING:

Taken before Stone Arledge, ACCR# TL2019, on
Thursday, October 13th, 2011, commencing at 6:33
p.m. at the Bryant Conference Center, 240 Paul
Bryant Drive, Tuscaloosa, Alabama 35487.

COMMITTEE MEMBERS:

SENATOR GERALD ALLEN – DISTRICT 21

SENATOR VIVIAN FIGURES – DISTRICT 33

SENATOR GERALD DIAL – DISTRICT 13

REPRESENTATIVE JIM McCLENDON – DISTRICT 50

HEARING OFFICER: DORMAN WALKER

* * *

MR. WALKER: Well, you've – you've hit another
area where there's a gradient instead of a guideline.
In the past, it used to be 65 or 65 – above 65 – 60
percent. 65 was thought to be maybe the correct
number, at least I remember in 1990, on the belief
that – which was brought out by the evidence that
minority communities had less of [an] ability to get
to the polls and lower turnout; therefore, in order to
make it an effective majority, black or other minority
district, you needed to have a higher level. I'm pretty
sure that if you were to send a district that was 65
percent black to the Department of Justice now, they

would wonder why you were packing it, and they'll be looking for, my understanding is, much lower levels. I mean a black majority would certainly be above 50, but 55 may be extreme in some cases.

* * *

ALABAMA LEGISLATURE PERMANENT
JOINT LEGISLATIVE COMMISSION ON
REAPPORTIONMENT LEGISLATIVE
REAPPORTIONMENT COMMITTEE

20TH HEARING

SELMA, ALABAMA

SENATOR SANDERS: One of many concerns is we are not to have any less African-American – the majority African-American districts than you have, and that those districts ought not be less than 62 percent. And I want to say why 62 percent, ought not to be less than 62 percent. Many times a population of a district isn't reflective of the voters at all in that district. Sometimes a lot of people don't vote. Sometimes a lot of people can't vote. They might be in prison or other kinds of institutions. Sometimes a lot of folks are discouraged for one reason or another. So I would hope that 62 percent is a minimal for the majority African-American district. Second, I would hope that there's not packing.

* * *

(Doc. 30-28, Ex. C-21, p. 6)

ALABAMA LEGISLATURE PERMANENT
JOINT LEGISLATIVE
COMMITTEE FOR REAPPORTIONMENT
IN RE PUBLIC HEARING
OCTOBER 13, 2011
THOMASVILLE, ALABAMA

REPRESENTATIVE JACKSON: Even in that process, I understand that. But as we tried to amend those bills on the floor of the House and, you know, nothing is accepted, no amendments was – you know, I kind of feel like this is the same way that these House and Senate districts is going to be done. And I have a commonality in my district. We – people – I know they've compacted those districts, put the minorities in one district they could put them in, but we didn't feel that that was fair. Let me say even in my district, having five counties – and they're all rural counties from Choctaw all the way over to Conecuh moving from Marengo and Monroe – and I wanted some – you know, some continuity in that process. And I would like to see what's going to become of this district even with those new numbers. So I am very concerned about that. You know, and having a minority district over there, it's got to be ninety-nine percent minority.

HEARING OFFICER: Right.

REPRESENTATIVE JACKSON: It could be sixty-two percent or sixty-five percent. That's what

we're trying to [illegible] our good friends before on that. Nobody listens too well to us.

(Doc. 30-23, Ex. C-16, p. 8)

* * *

MR. DOUGLAS: My name is Thamus Douglas. I'm a member of the Clarke County Board of Education representing District 4.

HEARING OFFICER: Thank you, Mr. Douglas.

MR. DOUGLAS: I understand that because of the economy in our area, that our minority population are migrating north. And if we kept the counties together, it would be nice. But if we kept the counties together, we would lose our minority representatives. And I feel like that you-all need to zone it so that we can have a voice in our government. And I'm through.

**AMENDMENT TO JOINT
STIPULATION OF FACTS**

Come now the parties to these consolidated actions and in compliance with the Court's Order on PreTrial Hearing, Doc. 153 at 4, and files this Amendment to the previously filed Corrected Joint Stipulation of Facts to stipulate the following:

19. Newton Plaintiff Stacey Stallworth is an adult, African-American citizen who is a registered voter of Montgomery County. Under the former house plan, Stallworth voted in HD 73, which is represented by Joe Hubbard, a white Democrat. Under the State's proposed plan, Stallworth will vote in HD 77, which is represented by John Knight, an African-American Democrat.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ALABAMA LEGISLATIVE	)	2:12-CV-00691-
BLACK CAUCUS, et al.	)	WKW-MHT-WHP
Plaintiffs	)	(Three Judge
	)	Court)
v.)	
THE STATE OF ALABAMA,)	
et al.)	
Defendants)	
<hr/>)	
DEMETRIUS NEWTON,)	
et al.	)	2:12-CV-01081-
Plaintiffs	)	WKW-MHT-WHP
	)	(Three Judge
vs.	)	Court)
STATE OF ALABAMA, et al.)	
Defendants)	

AFFIDAVIT OF JOE L. REED

(Filed Jul. 11, 2013)

STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

COMES NOW before me, a notary public in and for said county and said State and, being first duly sworn, deposes and states:

1. My name is Joe L. Reed. I am over the age of 21 years, have personal knowledge of the facts set forth, and am competent to testify regarding them.

2. I am the President/Chairman of the Alabama Democratic Conference (hereinafter referred to as the “ADC”).

3. The mission of the ADC is simple. It is to “organize” and to “unify” the vote of the African American population and also to make the African American vote and opinion appreciated and respected.

4. The ADC focuses on voter registration drives, monitoring voting, employing African Americans, and helping African Americans to be able to run for office and to hold high positions.

5. The ADC uses its funds and resources to educate voters, for Get Out the Vote efforts, to endorse political candidates of all races for elected and appointed offices, to lobby for and against legislation, to sponsor reapportionment plans statewide, to support lawsuits dealing with political matters and elections, and to organize and educate voters regarding political issues relevant to the organization’s purpose.

6. The ADC has members in nearly every county in the State of Alabama, including Calhoun County, Coosa County, Elmore County, and Talladega County.

7. As a result of the State's redistricting efforts in 2012, the excessive division of counties and voting precincts will create many unnecessary problems for candidates and voters, and these problems will fall most heavily on minority voters.

8. It is sometimes essential to split counties and precincts to comply with legal requirements, but there is a strong governmental interest in minimizing the number of counties and precincts split, especially from the perspective of minority voters and candidates. The division of existing voting precincts by district lines will, of course, necessitate the realignment of precinct boundaries and the reassignment of voters to new precincts. The process of reassigning voters will require considerable effort by the Boards of Registrars. Many of the Boards of Registrars, in my experience, lack technical skills.

9. The precinct splits also are likely to require a number of additional polling places. Locating and securing accessible sites with appropriate space and parking will involve time and resources on the part of county government, and we can no longer count on Section 5 to make sure the new polling places are not discriminatory.

10. The problems for the counties are less serious compared to the problems for voters who will need to be notified. Reassignment of voters to new precincts can, in the nature of things, result in mistakes: voters may be assigned to the wrong precinct. That has been the case in the past. Voters also must

learn of their new polling place assignments. That in turn requires knowledge that the polling place assignments have been changed or may have been changed, and the ability to ascertain the correct new assignment. Voters who lack internet access or lack reading skills – disproportionately minority voters – are at a severe disadvantage. Voters must actually get to the new polling places as well, which may be in an unfamiliar neighborhood. A disproportionate number of minority voters will not be able to navigate this process and will be discouraged from voting, or will go to the wrong polling location and lack the time, energy and resources to get to the correct site to cast a ballot.

11. As a practical matter, many minority voters rely on political campaigns and organizations to get such election information, and also to obtain rides to the polls. The changes flowing from the precinct splits will divert time and resources from minority campaigns and organizations like the ADC, which is already at a severe financial disadvantage. To make things worse, the Legislature has taken steps to defund black political organizations like the ADC by cutting off funds from sources like the Democratic Party, unions, and advocacy groups through the ban on transfers to the ADC via political action committees (PACs), and by its attacks on the AEA. Consequently, the ADC's resources and personnel will be undoubtedly be stretched thin to the point that they will not be able to meet increased demands, resulting

in a disproportionate number of minority citizens being able to vote.

12. The House and Senate plans increase the problems for minority voters, campaigns and organizations by the way the new district lines split many counties. Many of the county splits are unnecessary, and the House and Senate plans redraw a number of minority districts in a very irregular, contorted manner. Organizations that provide rides to the polls or engage in other “Get Out the Vote” activities will have to reorganize or form new alliances with shifts to new House, Senate, Congressional, County Commission, etc. type assignments. The irregularity of district lines is an impediment to such campaign activities, and will further stretch limited minority resources. As a result, a disproportionate number of minority citizens will not be able to vote.

13. The need for voter education and organization activities will be extraordinary as well. The party primary elections will be held on Tuesday, March 4, 2014. In addition to the need to inform voters of changes in district and polling places, the State of Alabama has enacted a new voter identification law. Alabama has not finalized its procedures for implementing this plan and for notifying voters of the requirement. A new voter ID requirement will generate confusion, and an effective campaign will have to spend time and resources educating voters in a very short time. In Georgia it took two years and a major publicity campaign.

14. The ADC is particularly concerned with the special difficulty of assisting voters who cannot read or who rely on Spanish translations. The state has no procedures for publicizing election information in Spanish or in any Asian languages. These citizens face unremitting hostility from state and local officials and regularly require assistance in voting.

15. Ultimately, some boundary changes are necessary. Some counties and precincts have to be split to comply with federal requirements. However, there is no federal law requirement that to split other counties that the House and Senate plans fracture. The State's plans go far beyond what is necessary and they split counties and precincts in ways that are unnecessary and illogical.

16. The State's House and Senate plans will disrupt existing minority political channels and systems, and add to the financial costs of minority candidates and others supporting minority participation in the new districts. Aside from the problems that the plan creates in terms of the opportunity of minority voters to elect candidates of their choice to the Legislature, the plans place new burdens on minority voters and make it harder for them to vote. As a result of these plans, many minority citizens will be unable to cast ballots in the 2014 elections.

FURTHER AFFIANT SAYETH NOT

/s/ Joe L. Reed

JOE L. REED

SWORN TO and SUBSCRIBED to this 9th of July,
2013

/s/ Kathy Mashan
NOTARY PUBIC

[My Commission expires
07/20/2013]

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION**

ALABAMA LEGISLATIVE)	
BLACK CAUCUS, et al.,)	
Plaintiffs,)	
THE STATE OF ALABAMA,	)	Case No. 2:12-cv-691
et al.,	)	WKW-MHT-WHP
Defendants.)	
<hr style="width: 30%; margin-left: 0;"/>		
DEMETRIUS NEWTON,)	
et al.,)	
Plaintiffs,)	
v.	)	Case No. 2:12-cv-1081
THE STATE OF ALABAMA,	)	WKW-MHT-WHP
et al.,)	
Defendants.)	

**MEMORANDUM IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT WITH RESPECT
TO NEWTON PLAINTIFFS' CLAIMS**

* * *

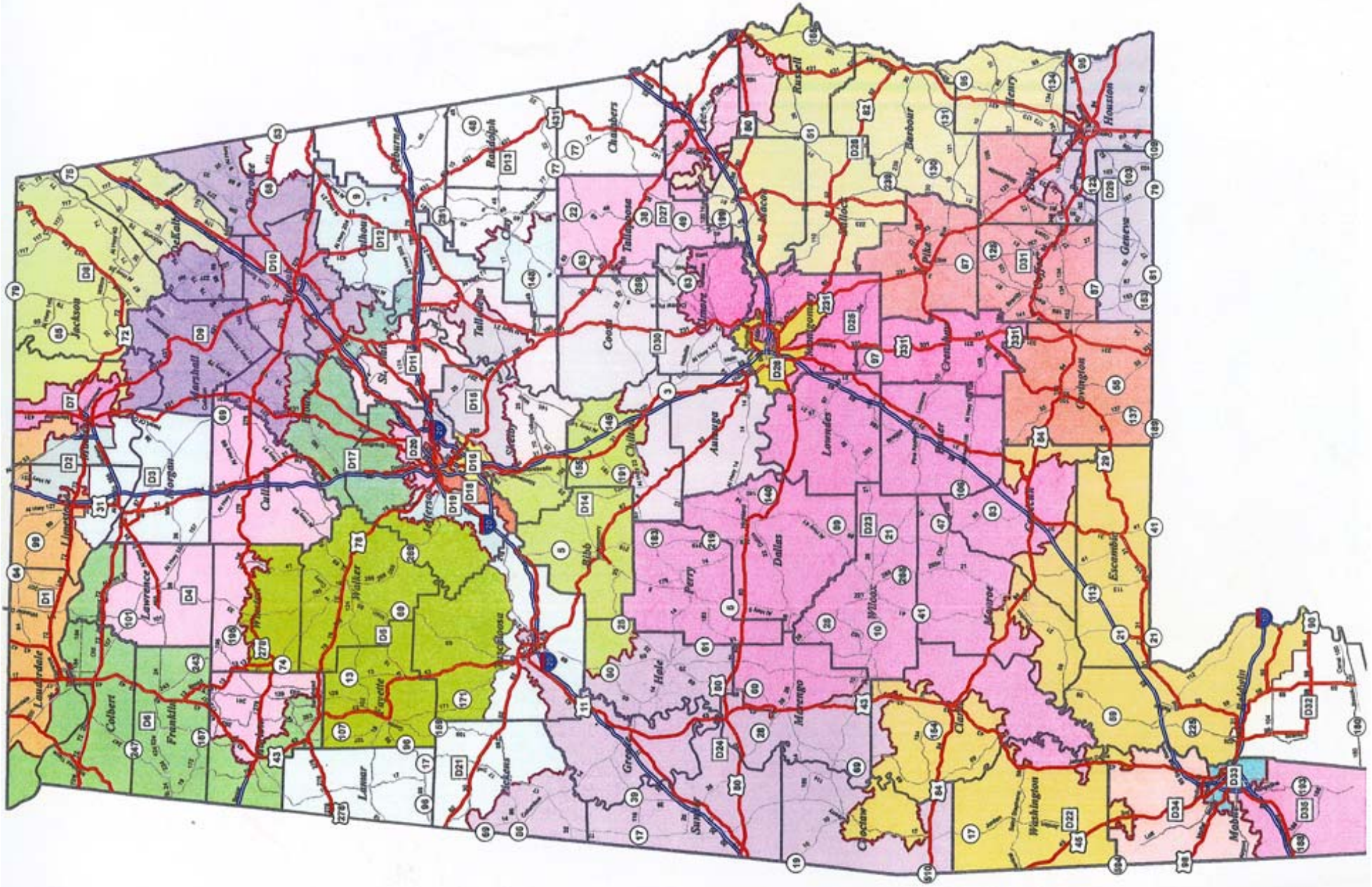
Newton Plaintiff Stacey Stallworth

197. Newton Plaintiff Stacey Stallworth lives in HD 73 in the 2001 House plan, which was represented by Joe Hubbard, a white Democrat. Exhibit P-7 at 7, lines 16-20.

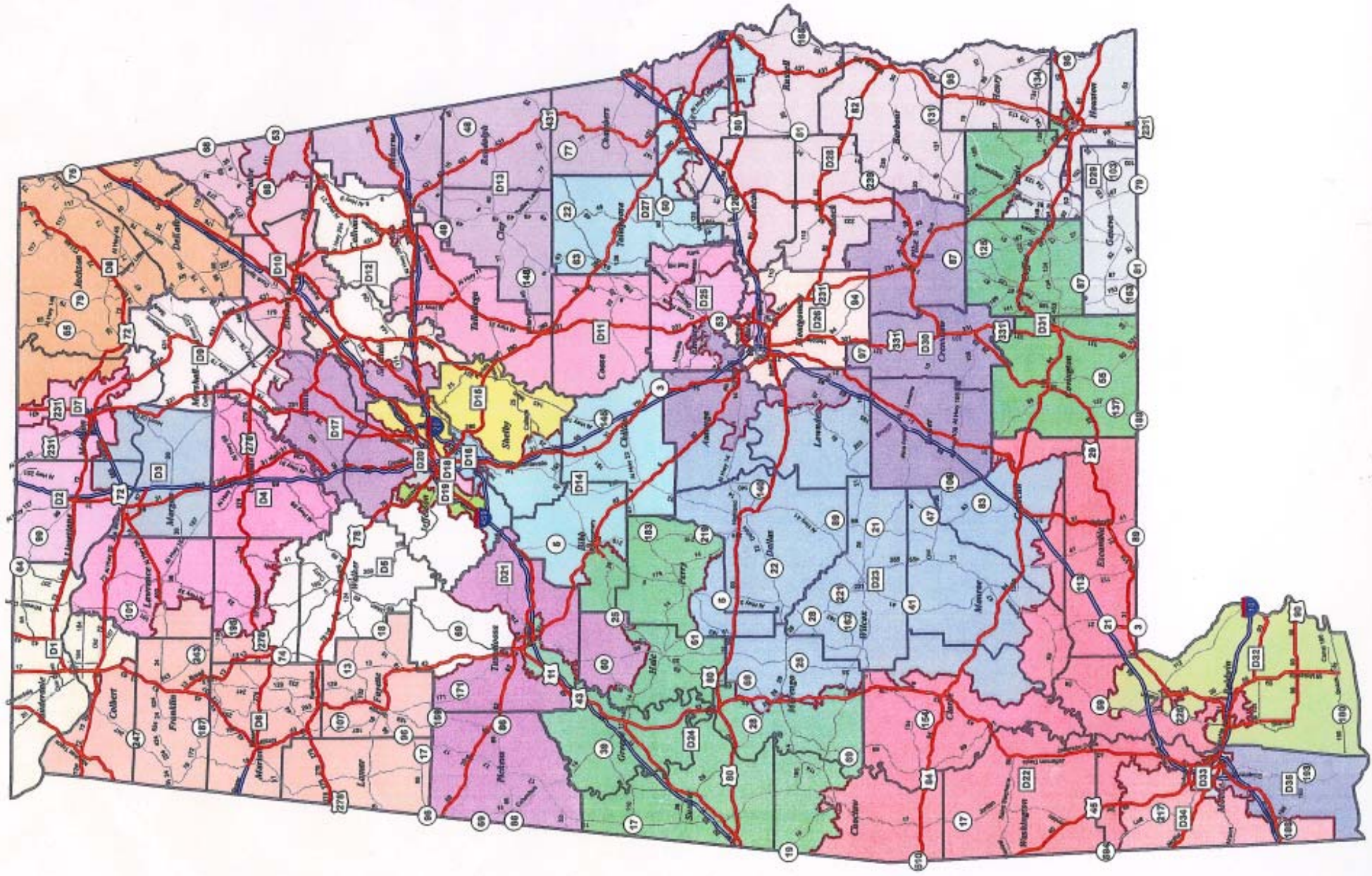
198. In the 2012 House plan, Newton Plaintiff Stacey Stallworth will live in HD 77, which is represented by John Knight, an African-American Democrat. Exhibit P-7 at 11, line 20 through 12, line 2.

* * *

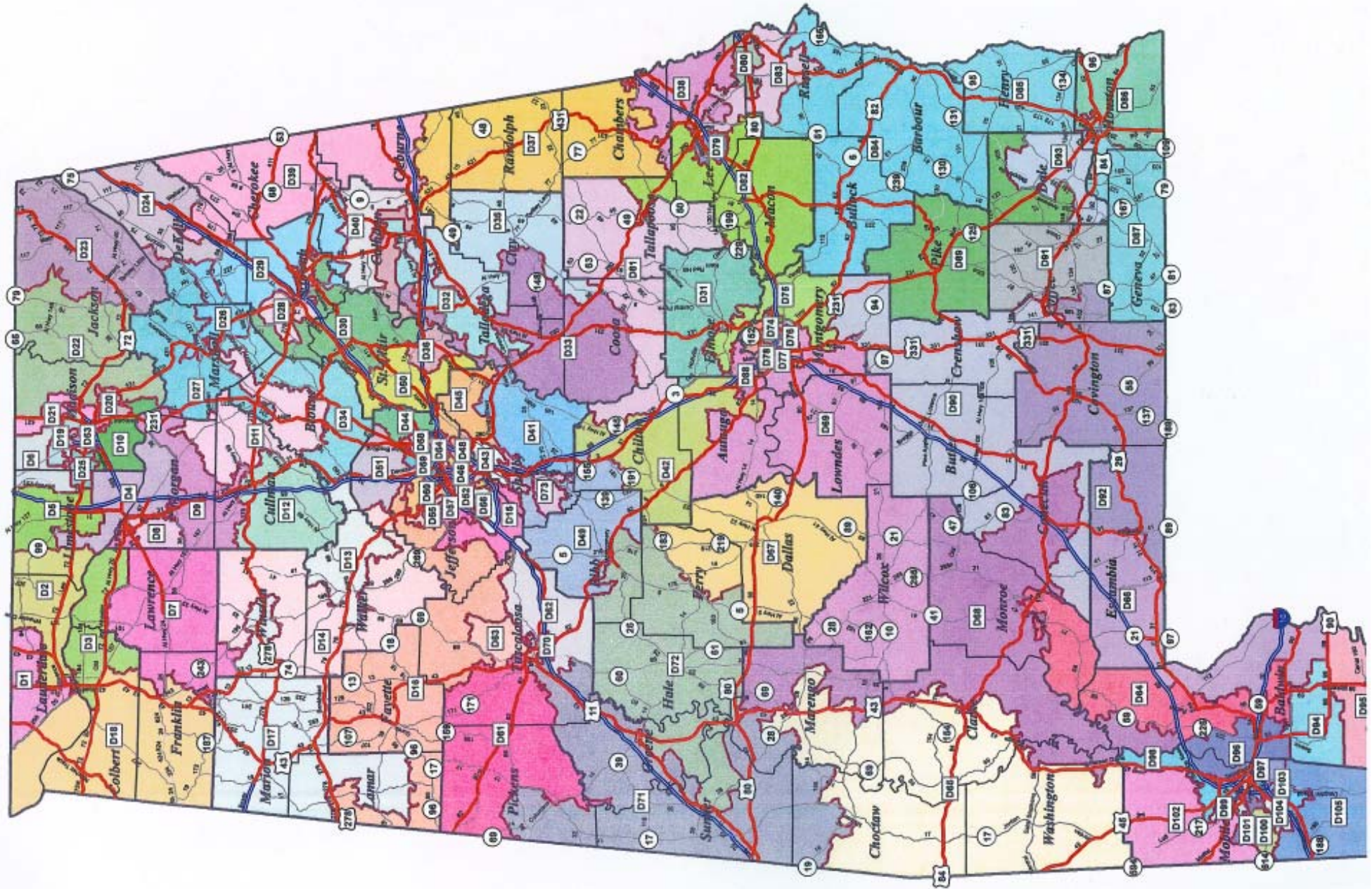
2014 Senate Districts



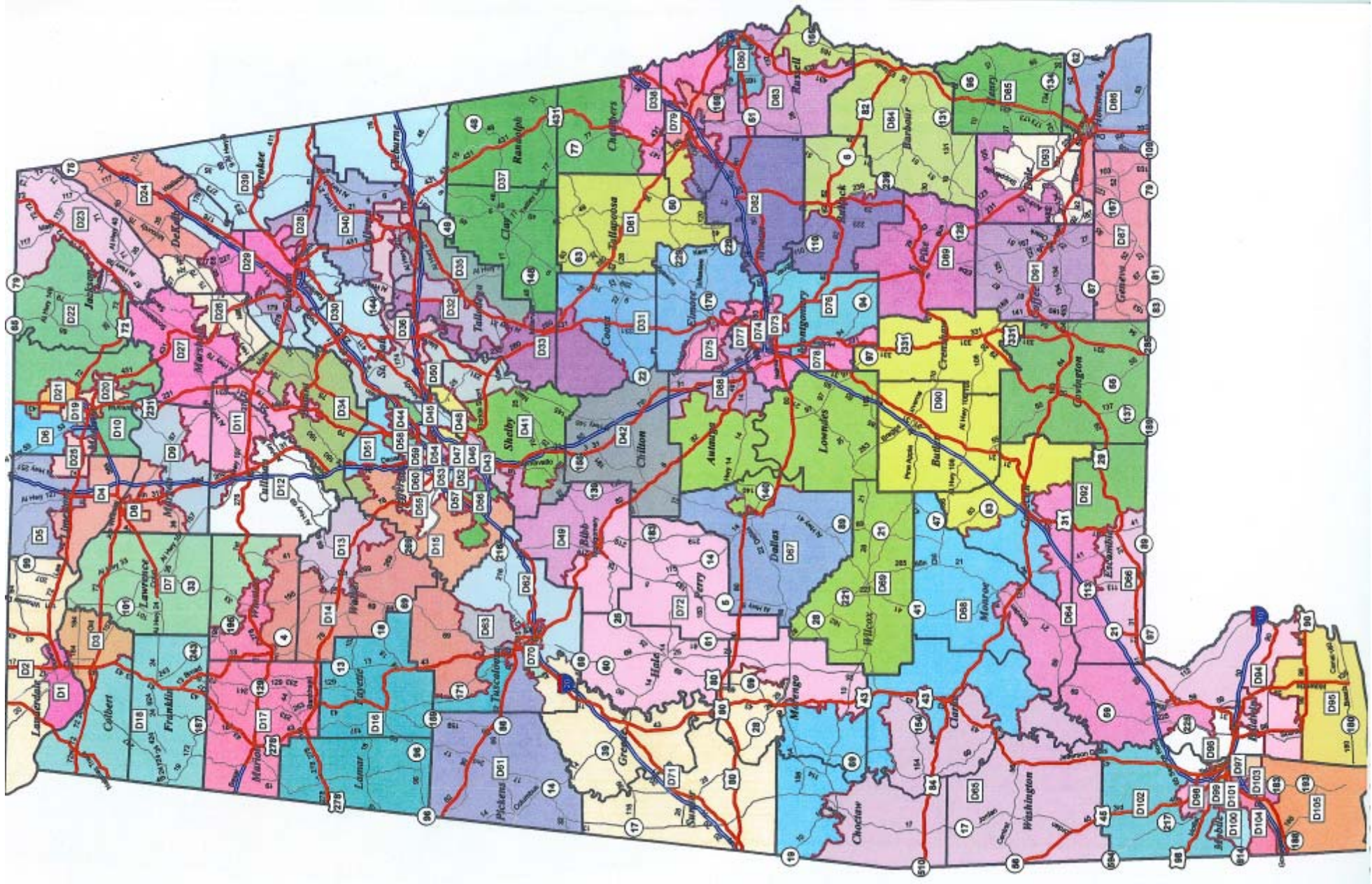
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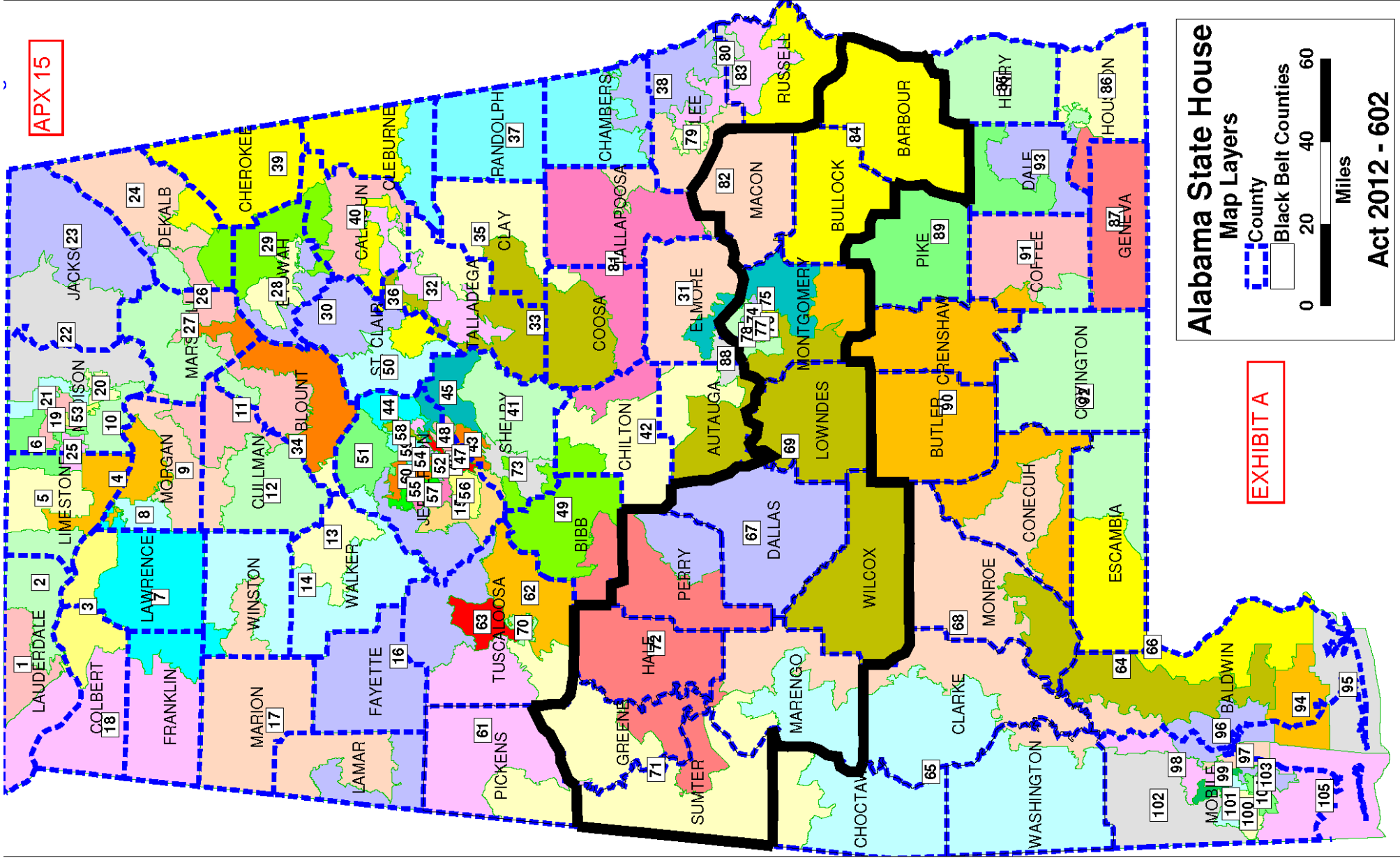
2014 House Districts



2001 House Districts



APX 15



Act 2012 - 602

APX 17

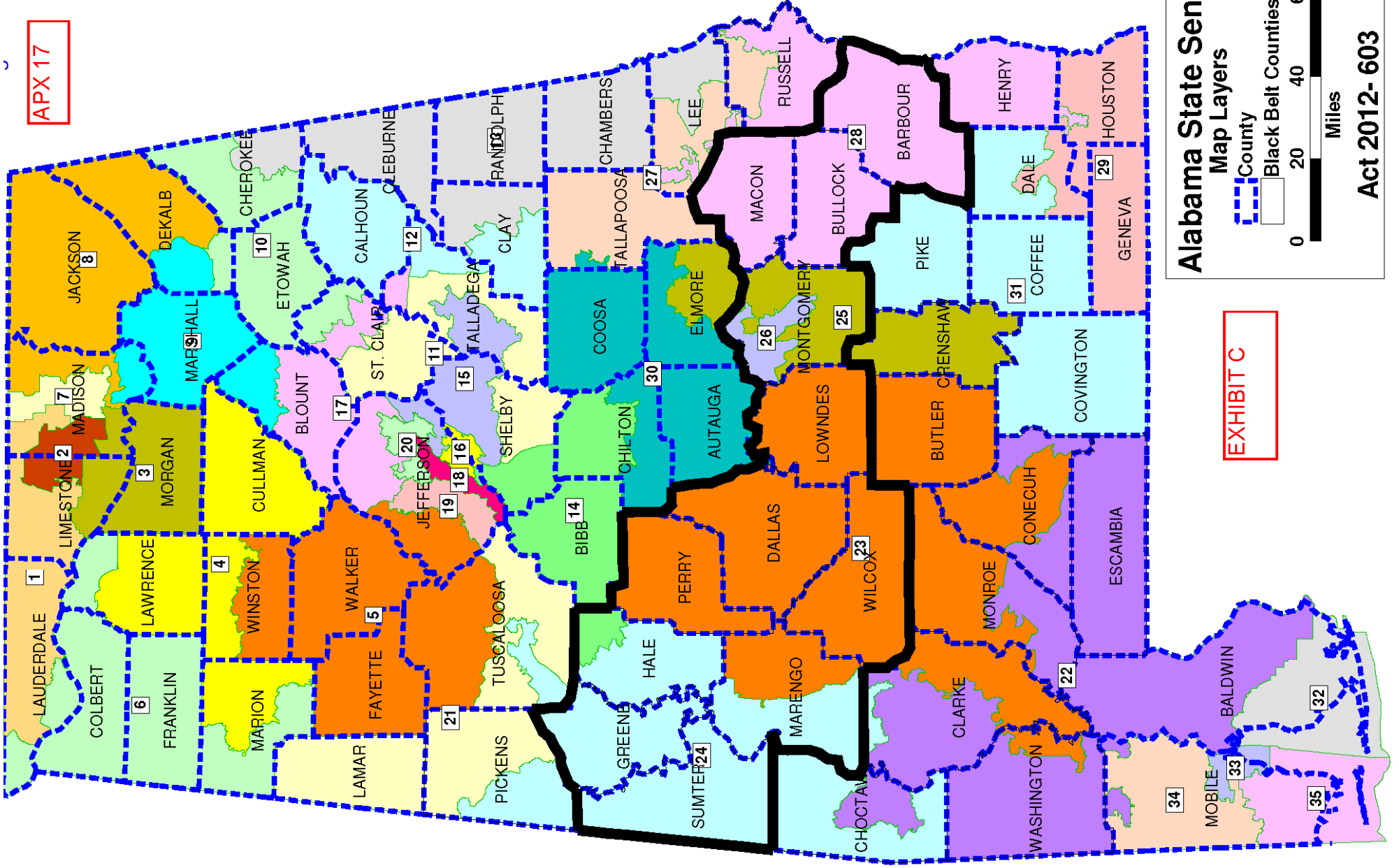
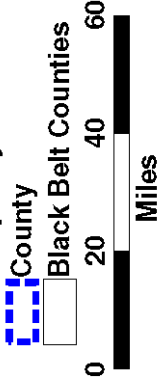


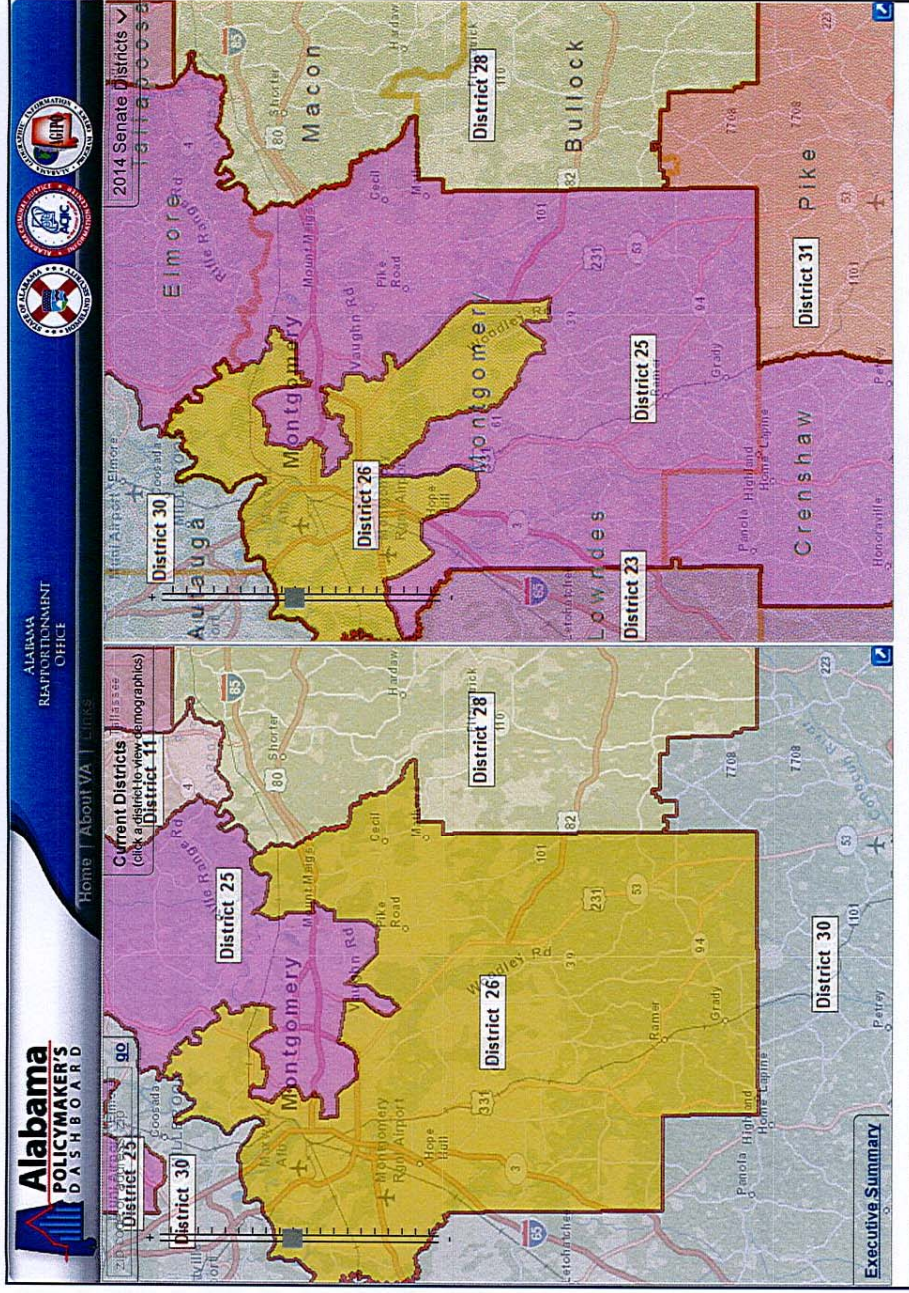
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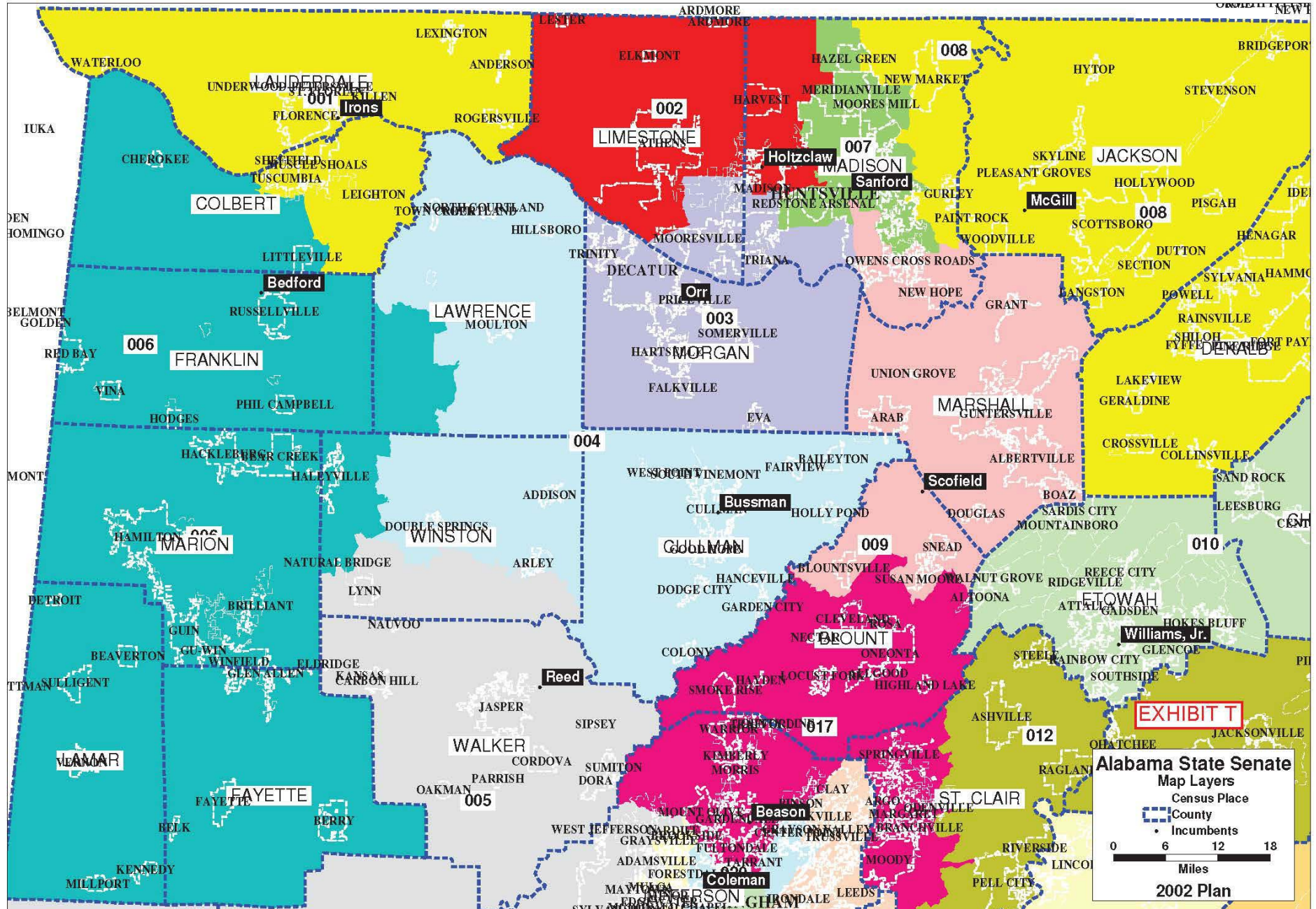
Alabama State Senate

Map Layers

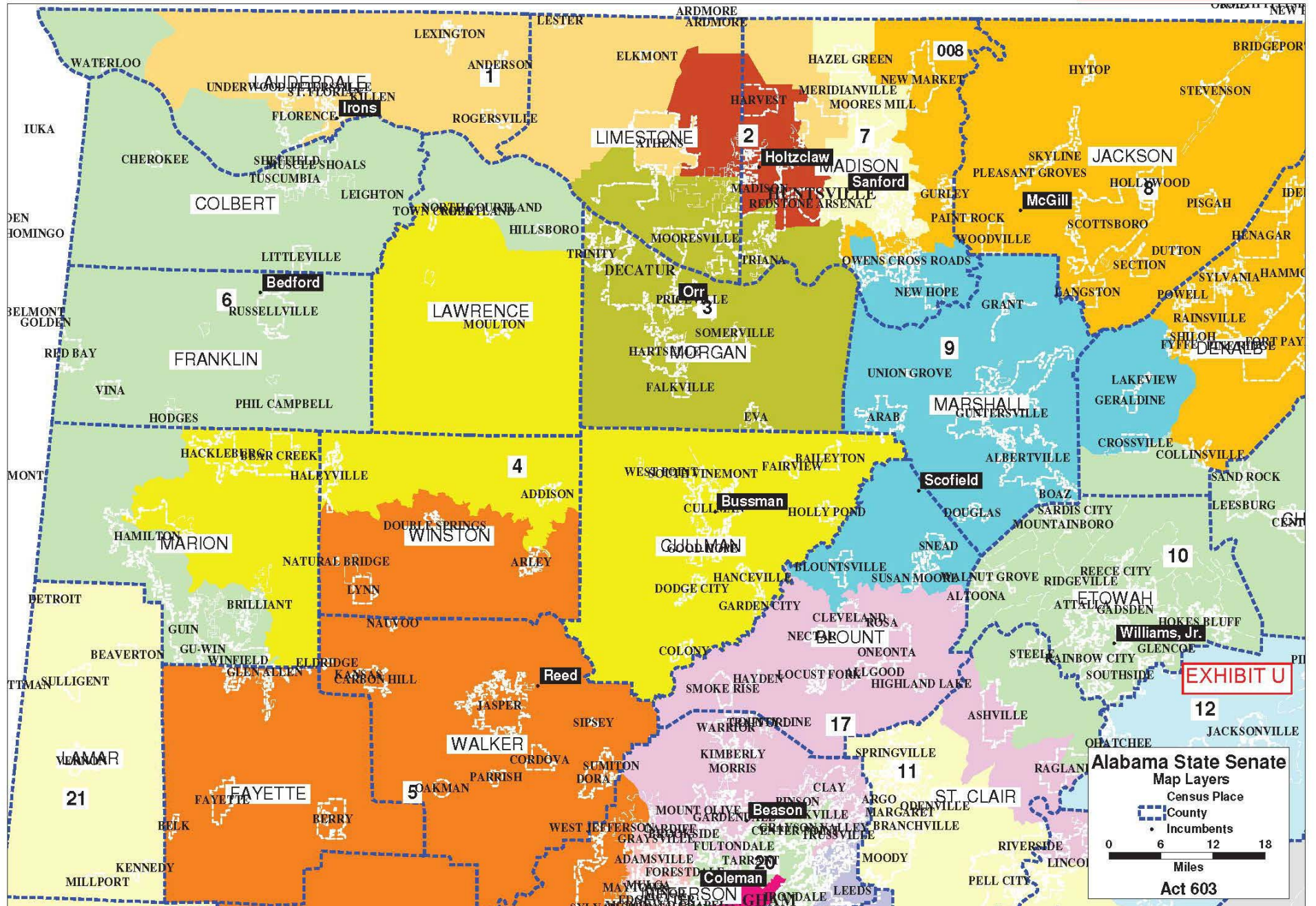


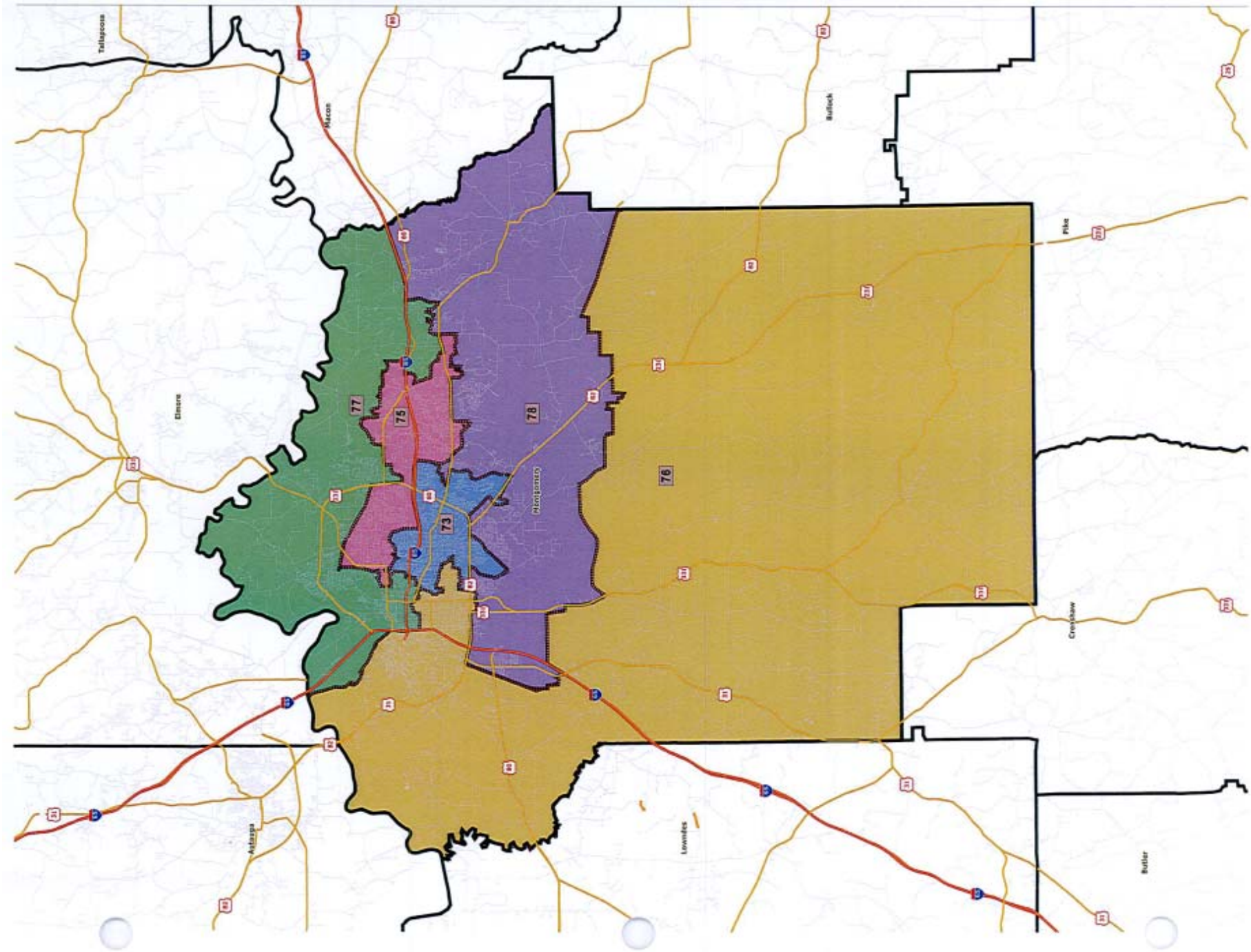
Act 2012-603



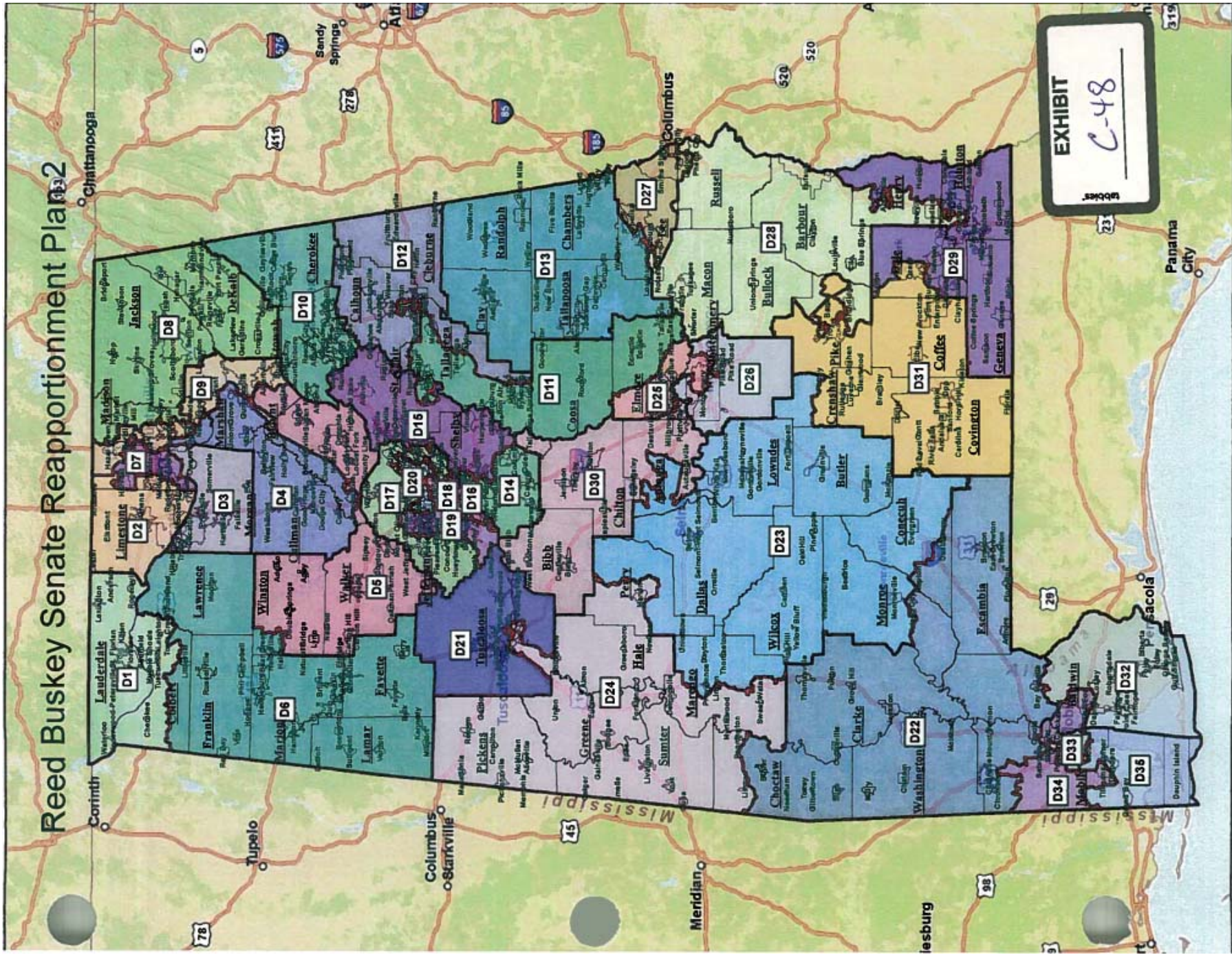


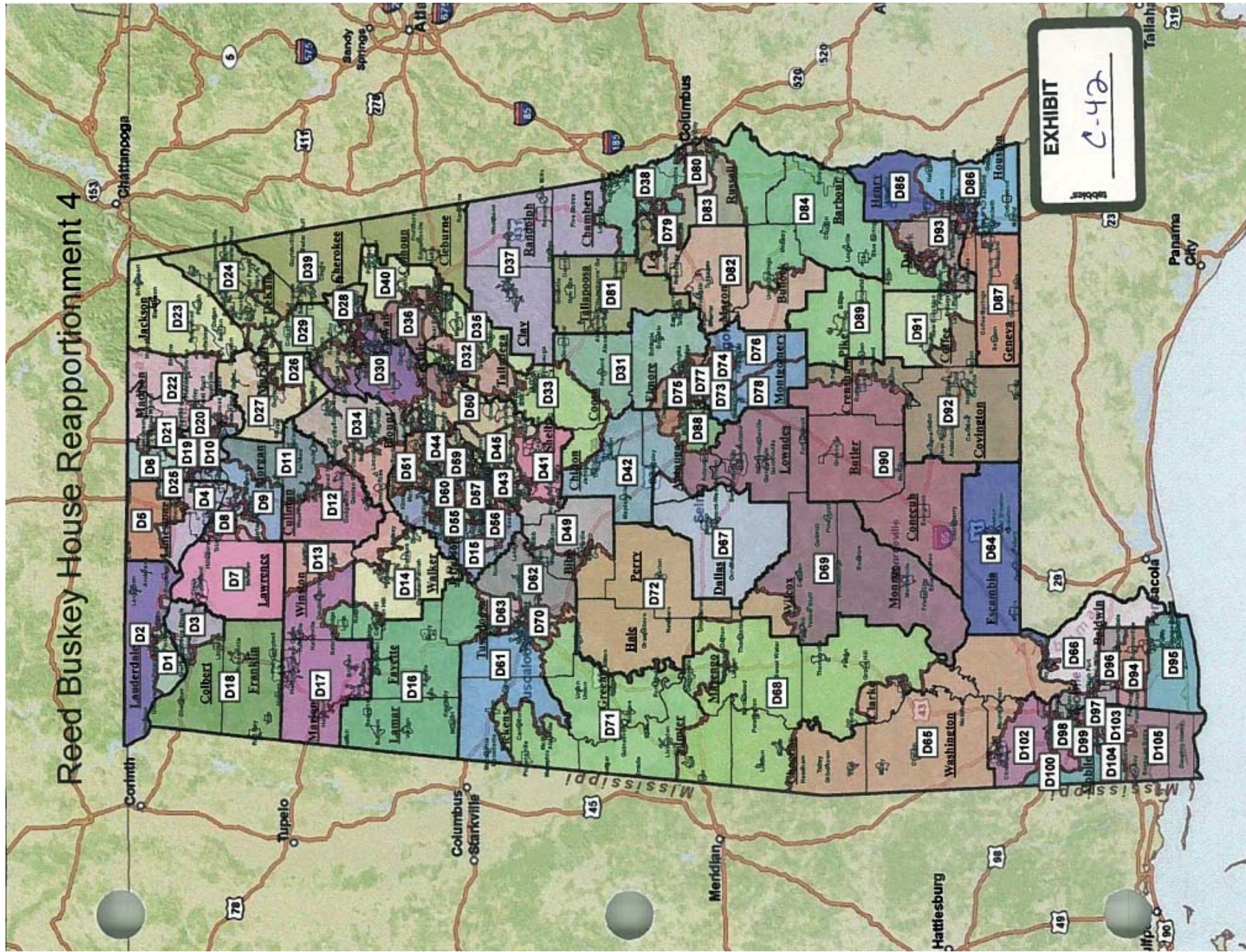
APX 35





Reed Buskey Senate Reapportionment Plan 2





**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION**

ALABAMA LEGISLATIVE)	
BLACK CAUCUS, et al.,)	
Plaintiffs,)	
[v.]	)	Case No. 2:12-cv-691
	)	WKW-MHT-WHP
THE STATE OF ALABAMA,)	
et al.,)	
Defendants.)	
<hr style="width: 30%; margin-left: 0;"/>		
DEMETRIUS NEWTON,)	
et al.,)	
Plaintiffs,)	
v.	)	Case No. 2:12-cv-1081
	)	WKW-MHT-WHP
THE STATE OF ALABAMA,)	
et al.,)	
Defendants.)	

**MEMORANDUM IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT WITH RESPECT
TO NEWTON PLAINTIFFS' CLAIMS**

(Filed Jun. 17, 2013)

* * *

ARGUMENT

1. The Applicable Standard

In pertinent part, Federal Rule of Civil Procedure 56(a) states, "The court shall enter summary judgment

if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

2. The Alabama Democratic Conference lacks standing to pursue district-specific racial gerrymandering claims.¹

In *United States v. Hays*, 515 U.S. 737, 115 S. Ct. 2431 (1995), the United States Supreme Court held that, in order to pursue a racial gerrymandering claim, one must live in the district at issue or otherwise show that he or she, personally, has been the subject of an invidious racial classification. The Court reasoned that, without such a showing, the claimant would be asserting only a generalized grievance that is insufficient to create standing. *Id.*, 515 U.S. at 743-45, 115 S. Ct. at 2435-37; see also *Lance v. Coffman*, 549 U.S. 437, 439, 127 S. Ct. 1194, 1996 (2007) (The Court has “consistently held” that a generalized injury is insufficient to create standing.).

Hays applies to the racial gerrymandering claims of the Alabama Democratic Conference. In Count II of their Complaint, the Newton Plaintiffs assert that the 2012 Alabama legislative redistricting plans are

¹ The Newton State Defendants note that the State of Alabama has been named as a defendant. That raises serious constitutional questions that this Court can avoid because full relief can be obtained through the official capacity defendant. This Court should dismiss the State as a party defendant for those reasons.

the product of unconstitutional racial gerrymandering. They do not distinguish between and among the individual plaintiffs and the Alabama Democratic Conference, which is characterized as “a statewide political caucus.” Newton No. 1 at 4, ¶ 3. As an association, the Alabama Democratic Conference “lives” everywhere and nowhere, so any claim of racial gerrymandering that it makes is, necessarily, a general one that it lacks standing to make.

For that reason, this Court should dismiss the racial gerrymandering claim of the Alabama Democratic Conference.

3. The Newton Plaintiffs lack standing to pursue their challenge to SD 11.

In their Complaint, the Newton Plaintiffs point to, among other things, SD 11 as an alleged product of racial gerrymandering. Newton No. 1 at 16, ¶ 46f. None of the individual Newton Plaintiffs claims to live in SD 11 or alleges a specific injury with respect to SD 11. Accordingly, under *Hays*, the Newton Plaintiffs lack standing to bring this claim, and this Court lacks jurisdiction to consider it. *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 734, 128 S. Ct. 2759, 2679 (2008) (internal citations and quotation marks omitted; alteration by the Court) (“[S]tanding is not dispensed in gross. Rather, a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought.”). This Court should

disregard any suggestion that SD 11 is the product
of unconstitutional racial gerrymandering

* * *

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION**

ALABAMA LEGISLATIVE)	
BLACK CAUCUS, et al.,)	
Plaintiffs,)	
[v.]	)	Case No. 2:12-cv-691
	)	WKW-MHT-WHP
THE STATE OF ALABAMA,)	
et al.,)	
Defendants.)	
<hr style="width: 30%; margin-left: 0;"/>		
DEMETRIUS NEWTON,)	
et al.,)	
Plaintiffs,)	
v.	)	Case No. 2:12-cv-1081
	)	WKW-MHT-WHP
THE STATE OF ALABAMA,)	
et al.,)	
Defendants.)	

**CONSOLIDATED REPLY BRIEF OF
THE *NEWTON* STATE DEFENDANTS,
SENATOR GERALD DIAL, AND
REPRESENTATIVE JIM McCLENDON
TO THE *NEWTON* PLAINTIFFS' RESPONSE**

(Filed Jul. 18, 2013)

* * *

The *Newton* Plaintiffs' reliance on associational standing is unsound in this context. In *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333,

343, 97 S. Ct. 2434, 2441 (1977), the Supreme Court noted, “[W]e have recognized that an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” In this case, the claim asserted requires the participation of the individual ADC members. See *United States v. Hays*, 515 U.S. 737, 115 S. Ct. 2431 (1995)

United Food and Commercial Workers Union Local 751 v. Brown Group, 517 U.S. 544, 116 S. Ct. 1529 (1996), is not to the contrary. There, the Supreme Court held that a union could pursue a claim for backpay on behalf of its members under the Worker Adjustment and Retraining Notification Act. The Court resorted to general principles in concluding that the third prong of the associational standing test as asserted in that case was prudential.

No such resort to general principles is warranted in the redistricting context. The Court’s decision in *Hays* is a specific holding regarding standing. If associational standing is allowed in this context, *Hays* will be a dead letter.

* * *

ALABAMA LEGISLATIVE)	
BLACK CAUCUS, et al.,)	
Plaintiffs,)	
v.	)	CIVIL ACTION NO.
THE STATE OF	)	2:12-cv-691-
ALABAMA, et al.,	)	WKW-MHT-WHP
Defendants.	)	(3-judge court)
<hr/>		
DEMETRIUS NEWTON,)	
et al.,)	
Plaintiffs,)	
v.	)	CIVIL ACTION NO.
THE STATE OF	)	2:12-cv-1081-
ALABAMA, et al.,	)	WKW-MHT-WHP
Defendants.)	

* * *

29. In order to pursue a racial gerrymandering claim, one must live in the district at issue or otherwise show that he or she, personally, is the subject of an invidious racial classification. *United States v. Hays*, 515 U.S. 737, 115 S. Ct. 2431 (1995). Without

such a showing, the claimant would be asserting only a generalized grievance which is insufficient to create standing.

30. No plaintiff who has suffered an actual, concrete, and particularized injury attributable to SD 11 has appeared. Any claims that relate or pertain in any way to SD 11 should be dismissed with prejudice for that reason.

* * *

ALABAMA LEGISLATURE
PERMANENT JOINT LEGISLATIVE
COMMITTEE ON REAPPORTIONMENT

IN RE: PUBLIC HEARING

MAY 17, 2012

MONTGOMERY, ALABAMA

* * *

[11] SENATOR BEDFORD: Thank you very much, Chairmen, Ladies and Gentlemen, I thank you for bringing these maps to us. The first time y'all came to Fayette for a hearing and you heard that Fayette and Lamar County and Marion County wanted to stay together, you put them in four [12] separate Senate districts. So, they probably would have wiped you out or run you out of town on the rail, one.

Not only do I feel, in all due respect to the chairmen of the committee, that Senate – that Dial Plan Number 2 is racial gerrymandering and the dilution of black vote, but it totally destroys the community of interest in Northwest Alabama in two specific ways:

* * *

[15] UNIDENTIFIED SPEAKER: Hey, Mr. Chairmen, Mr. and Mr. Chairmen. I come up here today to challenge the McClendon and the Dial plan under Section 2 of the Voter's Right Act of 1965, as amended under T-73 and the 14th and 11th Amendments of the Constitution of the United States. These two acts violate the "One-Person, One-Vote" standard

set out and controlled by a Supreme Court case by arbitrarily and unnecessarily splitting the population with deviations so the public is nullified, thereby causing non-compliance for the whole county [16] requirement under the Alabama Constitution. These acts are racially gerrymandering and unnecessarily divide the population deviation and violates the whole county provision of the Alabama Constitution and have both the purpose and effect of minimizing and isolating our African-Americans from influence in the Alabama Legislature.

* * *

[27] REPRESENTATIVE COLEMAN: Thank you to the chairperson, the Committee, I am Representative Merika Coleman from Jefferson County, I just want to reiterate a couple of points. I have a problem with the two plan as it relates to packing and stacking of the African-American vote. What I have seen on many of the [28] redistricting plans, they have between 58 – maybe 52- to 73-percent African-Americans in a particular district, and we just don't need that. That is packing the minority votes in a specific area, where we really want to spread that out and have people of minority being all over the State of Alabama, just not in those African-American districts. So, I have an issue with the packing and stacking.

* * *
