

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; FRED *
ARMSTEAD, GEORGE BOWMAN, *
RHONDEL RHONE, ALBERT F. *
TURNER, JR., and JILES WILLIAMS, JR., *
individually and on behalf of others *
similarly situated, *

Plaintiffs,

v.

THE STATE OF ALABAMA; JIM *
BENNETT in his official capacity as *
Alabama Secretary of State, *

Defendants. *

ALABAMA DEMOCRATIC *
CONFERENCE et al., *

Plaintiffs, *

v. *

THE STATE OF ALABAMA et al., *

Defendants. *

* Civil Action No.
* 2:12-CV-691-WKW-MHT-WHP
* (3-judge court)

* Civil Action No.
* 2:12-cv-1081-WKW-MHT-WHP
* (3-judge court)

**ALBC PLAINTIFFS' BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
IN COMPLIANCE WITH SUPREME COURT MANDATE**

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Plaintiffs Alabama Legislative Black Caucus et al., through undersigned counsel, submit the following authorities and argument in support of their motion for summary judgment in compliance with the mandate of the Supreme Court in

Alabama Legislative Black Caucus v. Alabama, 135 S.Ct. 1257 (2015), which vacated and remanded this Court’s December 20, 2013, opinion and judgments, Docs. 203 and 205, 989 F.Supp.2d 2013 (M.D. Ala. 2013) (three-judge court), for proceedings consistent with the Supreme Court’s opinion. Based on evidence already in the record, the documents attached to this brief, and the legal and constitutional standards set out in the Supreme Court’s opinion, plaintiffs are entitled to summary judgment declaring unconstitutional all 36 majority-black districts in Acts 2012-602 and 2012-603.

I. THE SUPREME COURT’S MANDATE.

The mandate instructs this Court “to allow appellants to reargue their racial gerrymandering claims” under the Equal Protection standards of *Shaw v. Reno*, 509 U.S. 630 (1993), utilizing the Supreme Court’s corrections of “four critical District Court determinations underlying its ultimate ‘no violation’ conclusion.” 135 S.Ct. at 124.

(1) Each of the majority-black districts must be scrutinized individually, and “plaintiff must show that ‘race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without *a particular district*’” 135 S.Ct. at 1265 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)) (emphasis added by the Supreme Court).

(2) The ADC plaintiffs must be given the opportunity to demonstrate that they have standing to prosecute *Shaw* claims in each challenged district. 135 S.Ct. at 1270.

(3) This Court must determine in each challenged district whether race was “the predominant motivating factor,” utilizing the correct standard for calculating “predominance” in *Shaw* challenges. *Id.* Predominance must be measured by examining whether “the legislature subordinated *traditional race-neutral districting principles* ... to racial considerations.” *Id.* (quoting *Miller*, 515 U.S. at 916) (emphasis supplied by the Supreme Court). However, “the requirement that districts have approximately equal populations” is not one of the traditional districting principles in a *Shaw* analysis. *Id.* at 1271. “Rather, it is part of the redistricting background, taken as a given, when determining whether race, or other factors, predominate in a legislator’s determination as to how equal population objectives will be met.” *Id.* at 1270.

Instead, traditional districting principles include “‘compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests,’ incumbency protection, and political affiliation.” *Id.* (quoting *Bush v. Vera*, 517 U.S. 952, 964 (1996)). “Thus, on remand, the District Court should reconsider its ‘no predominance’ conclusions with respect to Senate District 26

and others to which our analysis is applicable.” 135 S.Ct. at 1272.

(4) If the State defends the predominance of race in a particular district by contending it was narrowly tailored to comply with Section 5 of the Voting Rights Act, 52 U.S.C. § 10304, this Court should apply the correct construction of that federal statute. “Section 5 does not require maintaining the same population percentages in majority-minority districts as in the prior plan. Rather, § 5 is satisfied if minority voters retain the ability to elect their preferred candidates.” 135 S.Ct. at 1273. And the State must have “a strong basis in evidence” that the racial classifications were necessary to comply with Section 5. *Id.* at 1274. The State, it appears, may assert Section 5 on remand as a defense to its 2012 House and Senate districts. But the Supreme Court has left open the question whether, given *Shelby County v. Holder*, 133 S.Ct. 2612 (2013), compliance with Section 5 is necessary or would provide a compelling state interest to justify any remedial districts. *Id.*

(5) The Supreme Court also remanded for reconsideration, if this Court finds it appropriate, the ALBC’s one-person, one-vote claims on behalf of county residents and the ADC plaintiffs’ vote dilution claims. *Id.*

II. All 36 Majority-Black House and Senate Districts Are Unconstitutional Racial Gerrymanders.

In Act 2012-602 there are 28 House districts with black total population majorities, and in Act 2012-603 there are 8 Senate districts with black total population majorities. It is undisputed that the drafters attempted to maintain each of the 2001 majority-black districts at or above its total black percentage, measured by loading 2010 census data into the 2001 district boundaries. 135 S.Ct. at 1271; 989 F.Supp.2d at 1247. The racial percentage targets and the arbitrary restriction of population deviations to $\pm 1\%$ caused the drafters unnecessarily to split county and precinct boundaries, ignoring the express wishes of local leaders¹ and subordinating traditional districting principles in a way that purposefully separated white residents from black residents.

A. *Alabama's Traditional Districting Principles.*

The most important traditional districting principles in Alabama are those required by the state constitution, namely the preservation of county boundaries in compact, contiguous districts.² These are the only constraints that the sovereign

¹ “Members of the public who attended these hearings asked the Legislators to keep counties whole to the extent possible, preserve communities of interest, and allow voters to keep the representatives and senators with whom they were already familiar.” 989 F.Supp.2d at 1246.

² Every Alabama Constitution since the State's admission to the Union in 1819 has required seats in the House of Representatives to be apportioned among the counties in proportion to their populations, with each county entitled to at least one representative. 1819 Constitution of Alabama, Art. III, § 9; 1861 Constitution

“people of Alabama” have placed on the Legislature’s discretion “to reflect the democratic will of all the people concerning how their governments should be restructured.” Redistricting Guidelines, SDX 420 at 3. Other, non-constitutional “political values, traditions, customs, and usages of the State of Alabama” include avoiding incumbent conflicts, preserving precinct boundaries and other communities of interest, and consulting local community and political leaders. *Id.* at 3-4.

B. *Determining Racial “Predominance.”*

The Supreme Court held that this Court “did not properly calculate ‘predominance.’ In particular, it judged race to lack ‘predominance’ in part because it placed in the balance, among other nonracial factors, legislative efforts to create districts of approximately equal population.” 135 S.Ct. at 1270. The Supreme Court’s opinion makes clear that the goal of population equality is not a traditional districting principle; “it is part of the redistricting background, taken as

of Alabama, Art. III, § 9; 1865 Constitution of Alabama, Art. IV, § 6; 1868 Constitution of Alabama, Art. VIII, § 1; 1875 Constitution of Alabama, Art. IX, §§ 2-3; 1901 Constitution of Alabama, Art. IX, §§ 198, 199.

Senate seats, which are fewer than the number of counties, have also been apportioned among the counties, with the restriction that no county shall be divided among districts. 1819 Constitution of Alabama, Art. III, §§ 10-11; 1861 Constitution of Alabama, Art. III, §§ 10-11; 1865 Constitution of Alabama, Art. IV, § 7; 1868 Constitution of Alabama, Art. VIII, § 3; 1875 Constitution of Alabama, Art. IX, §§ 4; 1901 Constitution of Alabama, Art. IX, § 200.

a given, when determining whether race ... predominate[s] in a legislator's determination as to how equal population objectives will be met." *Id.* The Supreme Court's opinion points out that the Legislature's arbitrary $\pm 1\%$ deviation constraint was "a more rigorous deviation standard than our precedents have found necessary under the Constitution. See *Brown v. Thomson*, 462 U.S. 835, 842 (1983) (5% deviation from ideal generally permissible)." 135 S.Ct. at 1263.

Thus the State cannot continue to subordinate traditional districting principles, in relation to which racial predominance is determined, to a strict $\pm 1\%$ deviation policy.³ In 1965, on remand from the Supreme Court's decision in *Reynolds v. Sims*, 377 U.S. 533 (1964), the three-judge district court held that the longstanding whole-county provisos for House and Senate districts in the Alabama Constitution should remain operative "so far as practicable," giving way only where their application brings about "an unavoidable conflict" with the one-person, one-vote rule. *Sims v. Baggett*, 247 F.Supp. 96, 103, 101-03 (M.D. Ala. 1965) (three-judge court). "The departure from application of the quoted proviso should not extend further than is required by application of the Federal

³ "Although the Constitution of Alabama prohibits the division of a county among districts, see Ala. Const. Art. IX, § 200, the final plans split some counties to comply with the overall deviation in population of 2 percent used to satisfy the federal requirement of one person, one vote." 989 F.Supp.2d at 1258.

Constitution.” *Id.* at 102.

So the Legislature cannot invoke any federal constitutional policy to justify violating county integrity when doing so is not necessary to draw districts with a “generally permissible” \pm 5% population deviation. 135 S.Ct. at 1263. And it surely cannot justify dividing white residents from black residents with its \pm 1% deviation policy.⁴ “[T]he requirement that districts have approximately equal populations . . . is not a factor to be treated like other nonracial factors when a court determines whether race predominated over other, ‘traditional’ factors in the drawing of district boundaries.” 135 S.Ct. at 1271.

The Supreme Court’s opinion uses Senate District 26 to demonstrate how the record evidence should be examined to determine whether “a significant number of voters [have been placed] within or without a particular district.” 135 S.Ct. at 1270 (quoting *Miller*, 515 U.S. at 916). It directs that “on remand, the District Court should reconsider its ‘no predominance’ conclusions with respect to Senate District 26 **and others to which our analysis is applicable.**” 135 S.Ct. at 1272 (bold emphasis added).

⁴ “Compliance with these two goals [the racial percentage targets and the \pm 1% deviation restriction] posed particular difficulties with respect to **many of the State’s 35 majority-minority districts** (8 in the Senate, 27 in the House).” 135 S.Ct. at 1263 (emphasis added).

The Supreme Court’s analysis focuses not on how SD 26 compares with other districts, but on the specific populations that were moved in or out at the outer margins of SD 26. It starts with the undisputed direct evidence of racial gerrymandering and finds “[t]here is considerable evidence that this goal [of maintaining existing racial percentages] had a direct and significant impact on the drawing of at least some of District 26's boundaries.” 135 S.Ct. at 1271 (record citations omitted). First, the overwhelming majority of residents added to the district were black. *Id.* Second, the populations in seven split precincts were “clearly divided on racial lines.” *Id.* Third, it observed that “virtually all Senate District 26 boundaries departed from county lines....” *Id.* It concluded this was “strong, perhaps overwhelming, evidence that race did predominate as a factor when the legislature drew the boundaries of Senate District 26....” *Id.* In the following sections of this brief, we apply the Supreme Court’s evidentiary analysis and additional record evidence to demonstrate that race was a predominant factor in drawing each of the majority-black House and Senate districts.

C. *The Racial Targets or Quotas.*

The drafters’ freely admitted attempt to replicate or to exceed the total black population percentage in each majority-black district obtained by laying 2010

census data over the 2001 districts⁵ is the controlling factor in the *Shaw* analysis required by the Supreme Court’s mandate. “That Alabama expressly adopted and applied a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote) provides evidence that race motivated the drawing of particular lines **in multiple districts in the State.**” 135 S.Ct. at 167 (emphasis added).

The drafters⁶ began mapping with the majority-black districts, 989 F.Supp.2d at 1248, and the extraordinary lengths to which they went to maintain their inflated majority-black percentages had a “domino” impact on the whole state.⁷ Feeling unimpeded by county or precinct boundaries,⁸ they scoured the

⁵ The table comparing black total population percentages in the 2010 and 2001 plans set out in this Court’s December 2013 opinion, beginning at 989 F.Supp.2d at 1253, uses the wrong numbers. It uses 2000 census data to obtain the 2001 black percentages, instead of the 2010 census data the drafters actually relied on.

⁶ Sen. Gerald Dial and Rep. Jim McClendon, Chairs of the Permanent Legislative Committee on Reapportionment, and Randy Hinaman, their consultant.

⁷ 989 F.Supp.2d at 1260, 1275; defendants’ post-trial brief, Doc. 196 at ¶ 146; defendants’ summary judgment brief, Doc. 125 at ¶ 26 (citations omitted).

⁸ 989 F.Supp.2d at 1277; Defendants’ summary judgment brief, Doc. 125 at ¶¶ 42-43, 90. Sen. Dial blamed the wholesale division of counties on the Voting Rights Act. Testimony of Sen. Dial, 08-08-13 Tr. at 91. Rep. McClendon believed that because of federal court cases and guidelines “[t]here is no requirement to respect county boundaries.” McClendon quoted in press, APX 58 at 2.

map to grab enough black precincts or census blocks to add over 100,000 more black residents needed to maintain, within $\pm 1\%$ population deviation, the black percentages yielded by laying 2010 census data on the severely underpopulated 2001 majority-black districts. 989 F.Supp.2d at 1297. The drafters were open and unapologetic about making this nakedly racial project their primary objective. They believed that attempting to “guarantee” the ability of blacks to elect their candidates of choice provided the drafters a “safe harbor” under Section 5 of the Voting Rights Act.⁹

The geographic dispersal of black population made it impossible to hit the racial target in every district, but the drafters tried to come “as close to it as we could get,” Doc. 125-3 at 17, and they met or exceeded their goals in most districts, as the following tables show:

⁹ Doc. 125 at ¶ 30; Doc. 125-3 at 120; defendants’ post-trial brief, Doc. 196 at ¶ 82.

Comparison of Majority-Black House Districts in 2001 and 2012 plans using 2010 census data and % Black total population (from APX 6)¹⁰

House District	% Black 2001 plan	% Black 2012 plan	Difference
19	70.04	61.5 ¹¹	-8.54
32	59.62	60.3	0.68
52	60.09	60.1	0.01
53	55.71	56.2	0.49
54	56.77	56.9	0.13
55	73.54	73.6	0.06
56	62.26	62.3	0.04
57	68.49	68.5	0.01
58	78.08	73.0	-5.08
59	67.04	76.8	9.76
60	67.63	67.9	0.27
67	69.14	69.2	0.06
68	62.50	64.6	2.1
69	64.11	64.2	0.09
70	61.89	62.2	0.31
71	64.28	66.9	2.62

¹⁰ These tables are taken from the ALBC appellants' jurisdictional statement in Appeal No. 13-895, pages 15-17.

¹¹ House District 19 was the sole majority-black district in Madison County in the 2001 plan, and the size of its black majority necessarily decreased when majority-black HD 53 was moved from Jefferson County to Madison County.

72	60.12	64.5	4.38
76	69.56	73.9	4.34
77	73.58	67.0	-6.58
78	74.34	70.2	-4.14
82	57.18	62.2	5.02
83	57.03	57.7	0.67
84	50.67	52.4	1.73
97	60.73	60.8	0.07
98	65.23	60.0	-5.23
99	73.45	65.7	-7.75
103	69.90	65.3	-4.6

Comparison of Majority-Black Senate Districts in 2001 and 2012 plans using 2010 census data and % Black total population (from APX 7)

Senate District	% Black 2001 plan	% Black 2012 plan	Difference
18	59.93	59.12	-0.81
19	71.65	65.39	-6.26
20	77.96	63.38	-14.58
23	64.79	64.81	0.02
24	62.82	63.30	0.48
26	72.75	75.22	2.47
28	51.05	59.96	8.91
33	64.89	71.71	6.82

The drafters reached and exceeded their racial targets in 20 of the majority-

black House districts and came within 1% of their targets in 13 of those districts. They reached and exceeded their targets in 5 majority-black Senate districts, coming within 1% in two of those districts. They failed to reach their targets in only 7 majority-black House districts and in 3 Senate districts; but it was not for lack of trying, as the discussion below of individual districts will show.

Precinct splits provide perhaps the most telling evidence of the precision with which residents were moved in and out of the majority-black districts in efforts to come as close as possible to the drafters' racial targets. Attached to this brief are Appendices D and E to the ALBC plaintiffs' reply brief in the Supreme Court, which catalogue every precinct split in the majority-black House and Senate districts, based on exhibits admitted at trial. The race-based way those precincts were divided is stark. A total of 84 precincts were divided between majority-black and majority-white Senate districts. In 83 of those precincts a disproportionate part of the black residents was placed in the majority-black district, and in 6 instances all of the black residents of the precinct were placed in a majority-black district. Of the 154 precincts divided between majority-black and majority-white House districts, blacks are disproportionately placed in the majority-black district in 147 precincts, including 15 precincts in which all the black residents were put in the majority-black district.

We will refer to these split-precinct tables in the analysis of each majority-black district. But the unmistakable racial pattern of the splits viewed altogether reinforces the conclusion that race predominated over traditional districting principles in each district examined separately. “Voters, of course, can present statewide evidence in order to prove racial gerrymandering in a particular district.” 135 S.Ct. at 1265 (citing *Miller*, 515 U.S. at 916).

D. *The Districts Cannot Be Justified As Narrowly Tailored To Comply With the Voting Rights Act.*

The Supreme Court rejected the defense asserted by the Legislature and adopted by this Court that the majority-black House and Senate districts were narrowly tailored to satisfy the compelling state interest of complying with Section 5 of the Voting Rights Act.

[W]e conclude that the District Court and the legislature asked the wrong question with respect to narrow tailoring. They asked: “How can we maintain present minority percentages in majority-minority districts?” But given § 5's language, its purpose, the Justice Department Guidelines, and the relevant precedent, they should have asked: “To what extent must we preserve existing minority percentages in order to maintain the minority's present ability to elect the candidate of its choice?” Asking the wrong question may well have led to the wrong answer. Hence, we cannot accept the District Court's “compelling interest/narrow tailoring” conclusion.

135 S.Ct. at 1274. This Court had held: “To comply with section 5, the Alabama Legislature chose the only option available: to protect the voting strength of black

voters by safeguarding the majority-black districts and not substantially reducing the percentages of black voters within those districts.” 989 F.Supp.2d at 1310.

It is undisputed that the Legislature made no attempt to compile “a strong basis in evidence” that any of their majority-black districts were needed to provide black voters the ability to elect candidates of their choice. 135 S.Ct. at 1274 (citation omitted). To the contrary, “[t]he record makes clear that both the District Court and the legislature relied heavily upon a mechanically numerical view as to what counts as forbidden retrogression.” *Id.* at 1273. The minutely detailed sorting of populations based on race displayed in the analyses below of each majority-black House and Senate district shows there is no conceivable way any of them could be justified as narrowly tailored under the correct Section 5 standard.

E. Examination of the Majority-black House Districts.

A mere eyeball review of the precinct splits in Appendices D and E makes it obvious that the drafters of the 2012 House and Senate districts routinely split many precincts at the census block level in order to move as many black residents as possible into the majority-black districts, while minimizing the number of whites who unavoidably had to come with them. We will do the math in the following district-by-district analyses that confirms this racial pattern. This entails comparing the precinct splits in Appendix E to Exhibit 1 to this brief, which lists

the total populations and the numbers of whites and blacks in each precinct as of 2010 and thus was the starting point for the drafters.¹²

The ALBC has introduced remand House and Senate redistricting plans in the Legislature to demonstrate how the drafters of Acts 2012-602 and 2012-603 might have drawn districts that follow Alabama's traditional districting principles and comply with the Voting Rights Act.¹³ The ALBC remand plans will be referred to throughout this brief for the purpose of providing alternatives that help

¹² The map for the Act 2012-602 and 2012-603 plans can be viewed at APX 15 and 17, and the statistics relied on by the drafters can be viewed at SDX 400 and 403, copies of which are attached to this brief.

¹³ The ALBC remand House plan has been introduced in the Legislature as HB545 and SB412. See <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2015RS/PrintFiles/HB545-int.pdf>. The statewide map and statistics are Exhibits 5 and 6 to this brief, and the details can be viewed at <http://goo.gl/EOac2D>.

The ALBC remand Senate plan has been introduced in the Legislature as SB413 and HB544. See <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2015RS/PrintFiles/SB413-int.pdf>. The statewide map and statistics are Exhibits 7 and 8 to this brief, and the details can be viewed at <http://goo.gl/Y6Jgeq>.

These plans were drafted by the ALBC's consultant, William Cooper, according to guidelines provided by ALBC counsel, which were designed to comply with the constitutional standards set out in the Supreme Court's March 25, 2015, opinion. The plans attempt to minimize splits of county and 2010 precinct boundaries within $\pm 5\%$ population deviation, while complying with the Voting Rights Act. They were drawn with no input from any incumbent legislators, including members of the ALBC. However, an attempt was made to minimize conflicts among incumbents elected in 2014.

demonstrate how the drafters subordinated traditional districting principles to racial considerations. They are also advanced as suggested starting points for remedial House and Senate plans that might be negotiated in or out of the Legislature or that might be ordered by this Court.

HD 19 and HD 53, Madison County.

This Court found that majority-black HD 53 in Jefferson County was cannibalized so that the black population from that district could be divided up among other House districts in Jefferson County, in order to avoid any reduction in their black population percentages. 989 F.Supp.2d at 1249, 1294. “Hinaman moved House District 53 to the Huntsville area, where he was able to create another majority-black House district.” Id. at 1277 (citation omitted).

Because both HD 19 and HD 53 are contained entirely within Madison County, no county boundaries were split by these districts. But creating a second majority-black House district did require moving black population out of HD 19 and precincts in surrounding majority-white districts.

The drafters managed to keep HD 53's black percentage within 0.49% of its 55.71% target, even though HD 53 was no longer located in Jefferson County, where the census target was created. This mindless adherence to a mechanical racial target made it necessary to reduce HD 19 from 70.04% to 61.5% black and

to split many precincts along racial lines. Appendix D at 16a, Appendix E at 22a-23a, 26a-27a. (Page citations to Appendices D and E will be omitted hereafter.)

There were 14 precincts split in HD 19, only 4 of which were split solely with HD 53. Overall, to add the 2,701 persons needed to get within $\pm 1\%$ deviation, the drafters took 1,976 blacks out of HD 19 and added 4,757 whites. In the precincts split solely between the two majority-black districts, HD 19 got 1,314 whites and 3,217 blacks, while HD 53 got 2,747 whites and 6,690 blacks.

In Ed White Mid Sch precinct, the drafters moved a mere 17 blacks and 0 whites out of HD 19 to HD 53.

In Highlands School precinct, the drafters moved 1,074 blacks and 699 whites out of HD 19 to HD 53.

In Lewis Chapel CP Ch, the drafters moved 562 blacks and 113 whites out of HD 19 to HD 53.

In St. Luke Missionary Bapt Ch precinct, the drafters moved 5,037 blacks and 1,968 whites out of HD 19 to HD 53.

In the 10 precincts split between HD 19 and majority-white House districts, HD 19 got 9,974 whites and 6,805 blacks, while majority-white HD 6, HD 21, and HD 25 combined got 22,805 whites and only 5,406 blacks.

In Blackburn Chapel CP Ch precinct, the drafters moved 1,068 whites

and 781 blacks to HD 19 and 169 blacks and 138 whites to HD 53, leaving only 23 blacks and 122 whites in majority-white HD 6.

In Chapman Mid Sch precinct, the drafters moved 113 blacks and only 6 whites to HD 19, leaving 197 blacks and 3,379 whites in majority-white HD 21.

In Ch of Christ Meridianville precinct, the drafters moved 72 blacks and only 30 whites to HD 19, leaving 448 blacks and 3,147 whites in majority-white HD 21.

In Grace United Meth Ch precinct, the drafters moved 372 blacks and 569 whites to HD 19 from majority-white districts HD 6 and HD 25.

In Harvest Bapt Ch precinct, the drafters moved 1,292 blacks and 2,093 whites to HD 19 from majority-white HD 6.

In Mad Co Teacher Resource Ctr precinct, the drafters moved 37 blacks and 145 whites to HD 19 from majority-white HD 21, leaving 4,184 whites and 747 blacks in HD 21.

In Pineview Bapt Ch precinct, the drafters moved 2,010 blacks and 3,643 whites to HD 19 from majority-white HD 6, leaving 2,738 whites and 805 blacks in HD 6.

In Sherwood Bapt Ch precinct, the drafters moved 801 blacks and

515 whites to HD 19 from majority-white HD 25 and HD 6, leaving only 2 whites and 0 blacks in HD 25.

HD 53 had portions of 13 split precincts, including the four only between HD 53 and HD 19 already discussed. Appendix E at 26a-27a.¹⁴ In the 9 precincts split between HD 53 and majority-white districts (HD 6, HD 10, and HD 21), 5,539 whites and only 1,160 blacks were put in the majority-white districts, while 9,004 blacks were put in HD 53, along with 7,349 whites.

In Airport Road Fire Station #8 precinct, the drafters moved 1,219 blacks and 999 whites to HD 53 from majority-white HD 10.

In Blackburn Chapel CP precinct, the drafters moved 169 blacks and 138 whites to HD 53 from majority-white HD 6 and majority-black HD 19.

In Charles Stone Agr Ctr precinct, the drafters moved 1,815 blacks and 779 whites to HD 53 from majority-white HD 21.

In Eastside Comm Ctr precinct, the drafters moved 84 blacks and 52 whites to HD 53 from majority-white HD 21.

In Fire and Rescue Acad precinct, the drafters moved 1,710 blacks and 837 whites to HD 53 from majority-white HD 21.

¹⁴ Three split precincts in HD 53 erroneously appear in HD 52 on page 26a of Attachment E.

In Ridgecrest School precinct, the drafters moved 1,079 blacks and 1,289 whites to HD 53 from majority-white HD 10.

In University Place School precinct, the drafters moved 1,780 blacks and 1,603 whites to HD 53 from majority-white HD 6.

In Westlawn Mid Sch precinct, the drafters moved 116 blacks and 440 whites to HD 53 from majority-white HD 6.

So the racial pattern of precincts split between HD 19 and HD 53 and majority-white districts is clear. But even the precincts split between majority-black HD 19 and HD 53 show that just enough black residents were moved out of HD 19, reducing its black percentage to 61.5%, to allow the drafters to exceed – by 0.49% – their racial target of 56.2% black for HD 53. This is the kind of racial “fine tuning” that violates *Shaw*.

HD 32, Calhoun and Talladega Counties.

The drafters met their 59.62% black target for HD 32, exceeding it by only 0.68%. Overall, the drafters moved 6,704 persons into HD 32 to bring it within $\pm 1\%$, of whom 4,304 were black and 1,606 were white. See Exhibit 3 to this brief. (Citations to Exhibit 3 will be omitted hereafter.) To do so the drafters split 13 precincts, all in Calhoun County and all involving precincts in majority-white

House districts.¹⁵ Taken together, these splits put 28,367 black residents in HD 32, but only 16,846 whites. The precinct splits put 38,357 whites but only 8,272 blacks in majority-white districts HD 33, HD 35, HD 36, and HD 40.

The following precincts were split in Calhoun County:

In 1st Presby/Mental Health¹⁶ precinct, the drafters moved 137 blacks to HD 32 from majority-white HD 36 and moved 196 whites **out** of HD 32 to HD 36.

In Anniston precinct, the drafters moved 1,393 blacks and 2,196 whites to HD 32 from majority-white HD 35 and HD 36.

In Eulaton/Bynum/W Park Hts Bapt. precinct, the drafters moved 56 blacks into HD 32 from majority-white HD 35, HD 36, and HD 40, and moved 736 whites **out** of HD 32.

The following precincts were split in Talladega County:

In Eastaboga Comm Ctr/Old Lincoln High Gym precinct, the drafters moved 880 blacks to HD 32 from majority-white HD 33 and HD 35 and 215 whites **out** of HD 32.

¹⁵ HD 33 is mistakenly shaded dark in the Limbaugh Comm Ctr-Bon Air-Oak Grove precinct in Appendix E.

¹⁶ Appendix E erroneously names it 2nd Presby/Mental Health.

In Limbaugh Comm Ctr-Bon Air-Oak Grove precinct, the drafters moved 965 blacks and 623 whites to HD 32 from majority-white HD 33.

In Mabra-Kingston Bapt-Talla Co Central High precinct, the drafters moved 492 blacks to HD 32 from majority-white HD 35 and moved 1,022 whites **out** of HD 32.

In Old Mumford High precinct, the drafters moved 409 blacks and 133 whites to HD 32 from majority-white HD 35.

In Renfroe Fire Hall-Stemley Fire Hall precinct, the drafters moved 470 blacks and 106 whites to HD 32 from majority-white HD 33.

In Talladega Nat Guard Armory precinct, the drafters moved 184 blacks and 84 whites to HD 32 from majority-white HD 35.

In Waldo City Hall precinct, the drafters moved 29 blacks and 28 whites to HD 32 from majority-white HD 35.

In Winterboro Vol Fire precinct, the drafters moved 127 blacks and 709 whites **out** of HD 32 to majority-white HD 33 and HD 35.

In Bethel Bapt precinct, there was no change.

HD 52, Jefferson County.

This is the first of eight majority-black House districts in Jefferson County. All eight districts **by definition** violate the *Shaw* prohibition against subordinating

traditional districting principles to race, because the drafters proudly confessed they cannibalized HD 53 to grab the black populations the remaining eight majority-black districts needed to reach their racial targets. This violated the Guideline principles of preserving the core of districts and avoiding incumbent conflicts. They were able to exceed their targets by less than 1% in six of the eight majority-black Jefferson County House districts; only HD 58 (73.0% vs. 78.08% target = -5.08%) and HD 59 (76.8% vs. 67.04% target = +9.76%) missed their targets. The precinct splits discussed *infra* suggest the drafters either ran out of available black populations or were trying to “balance” the latter two districts in excess of 70%. Cf. 989 F.Supp.2d at 1310 (“the Legislature fairly balanced the overall percentages of the black voting-age populations in the majority-black House districts....”).

In the Supreme Court, the State appellees conceded that “the drafters repopulated the[] [underpopulated] majority-black districts by removing contiguous population from majority-white districts.” Br.Appellees 4-5. The majority-white districts adjoining those underpopulated majority-black districts typically had few concentrations of black residents. In Jefferson County the area of the county outside of the majority-black House districts (as they existed under the 2001 lines) was only 18.06% black; as Hinaman pointed out, indeed

complained, repopulating the black districts from the contiguous majority-white districts was certain to lower significantly the black population percentage in those majority-black districts. Tr. v. 3, 131-33.

The drafters met and exceeded, within 0.01%, their 60.09% target for HD 52. A net total of 1,606 persons were moved into HD 52 to bring it within $\pm 1\%$ deviation, 1,165 blacks and 196 whites. To do so, the drafters split two precincts HD 52 shares with majority-white districts.

Birmingham Botanical, a precinct located entirely inside HD 52 in the 2001 House plan, contained only 12 black residents. So the drafters moved 587 whites **out** of HD 52 into majority-white HD 46, leaving only 4 blacks and 380 whites in HD 52.

Shades Cahaba Elem Sch, a precinct that had been located entirely in old HD 52, was split to take 2,523 whites and only 100 blacks **out** of HD 52 and move them to majority-white HD 46.

In the 5 precincts split between HD 52 and other majority-black districts,¹⁷ the lack of any clear pattern only shows how black and white populations were being shaved between majority-black districts to hit their arbitrary target

¹⁷ The split between HD 52 and HD 55 in Green Springs Bapt Ch appears only under HD 55 at page 29a of Attachment E.

percentages. Again, this is the kind of racial “fine tuning” that violates *Shaw*.

Four of the split precincts HD 52 shares with other majority-black districts were part of cannibalized HD 53 in the 2001 plan: Ctr Street Mid Sch, Green Springs Bapt Ch, Ramsey HS, and Southside Branch Pub Lib. HD 53 donated 2,668 blacks and 2,500 whites to HD 52.

HD 54, Jefferson County.

The drafters met and exceeded, within 0.13%, their 56.77% target for HD 54. A net total of 10,165 persons were added to HD 54 to bring it within $\pm 1\%$ deviation, 5,811 blacks and 3,957 whites. To do so, the drafters split 16 precincts, only 3 of which were split between HD 54 and majority-white districts. In those three splits, 2,406 whites and 1,427 blacks were put in HD 54, but 9,787 whites and 4,837 blacks were taken **out** of HD 54 and placed in majority-white HD 44 and HD 45.

The Clearview Bapt Ch precinct was contained entirely in majority-white HD 44 in the 2001 plan. The drafters moved 628 blacks and 642 whites into HD 54, leaving 3,496 whites and 801 blacks in HD 44.

The Irondale Sr Cit Bldg precinct was located entirely in majority-white 45 in the 2001 plan. The drafters moved 621 blacks and 1,667 whites into HD 54, and 9 blacks and 310 whites into majority-white HD 44, leaving 2,587

blacks and 1,222 whites in HD 45.

The Mountain View Bapt Ch precinct was located entirely in majority-white HD 44 in the 2001 plan. The drafters moved 410 blacks and 584 whites into HD 54, leaving 1,440 blacks and 4,759 whites in HD 44.

In the 13 precincts split only between majority-black districts, there is clear evidence of “point shaving” to reach the racial targets within the constraints of $\pm 1\%$ total population deviation. For example, four precincts are split among three majority-black House districts, and some splits move as few as 1 white and 5 blacks (Crestwood Comm Educ), or 0 whites and 14 blacks (Gate City Elem Sch). None of these 13 precincts split between majority-black districts had previously been in the cannibalized HD 53.

HD 55, Jefferson County.

The drafters met and exceeded, within 0.06%, their 73.54% target for HD 55. A net total of 9,499 persons were added to HD 55 to bring it within $\pm 1\%$ deviation, 6,988 blacks and 730 whites. To do so, the drafters split 9 precincts, all between majority-black districts. There is no obvious pattern here, which is an indication of point shaving, particularly where HD 55 got only 76 whites and 17 blacks in the Sandusky Comm Sr Citizen’s Park precinct, and only 11 whites and 75 blacks in the South Hampton Elem precinct split. Five of the split precincts

had been in HD 53 in the 2001 plan: Ctr Street Mid Sch, Glen Iris Elem Sch, Green Springs Bapt Ch, Legion Field Lobby, and Ramsey HS. Cannibalized HD 53 donated 6,601 blacks and 5,294 whites to HD 55.

HD 56, Jefferson County.

The drafters met and exceeded, within 0.04%, their 62.26% target for HD 56. A net total of 4,007 persons were added to HD 56 to bring it within $\pm 1\%$ deviation, 2,495 blacks and 906 whites. To do so, the drafters split 4 precincts, 2 of which were split between HD 56 and majority-white HD 15 and HD 46.

The Canaan Bapt Ch precinct was located entirely in HD 56 in the 2001 plan, but the drafters moved 2,647 whites and 768 blacks **out** of HD 56 into majority-white HD 15, even though HD 56 was under-populated.

In Hunter Street Bapt Ch precinct, the drafters moved 337 blacks and 1142 whites to HD 56 from majority-white HD 46.

In Brooklane Comm Ctr precinct, the drafters moved 592 blacks and 896 whites to HD 56 from majority-black HD 57.

In Mount Olive Bapt Ch precinct, the drafters moved 528 blacks and 20 whites to HD 56 from majority-black HD 57.

These figures, especially the 1 white resident and 106 black residents left in HD 57 in the Mount Olive Bapt Ch precinct, are evidence of “fine tuning” to hit

the drafters' racial target within $\pm 1\%$.

HD 57, Jefferson County.

The drafters met and exceeded, within 0.01%, their 68.49% target for HD 57. A net total of 8,872 persons were added to HD 57 to bring it within $\pm 1\%$ deviation, 6,092 blacks and 2,763 whites. To do so, the drafters split 5 precincts, all but one between only majority-black districts.

In the Adamsville Bapt Ch precinct, the drafters moved 462 blacks and 215 whites to HD 57 from majority-black HD 55.

In the Adamsville Sr Cit Bldg precinct, the drafters moved 346 blacks and 285 whites to HD 57 from majority-black HD 55.

In the Brooklane Comm Ctr precinct, the drafters moved 1,377 blacks and 1,303 whites out of HD 57 to majority-black HD 56, as noted above.

In the Mount Olive Bapt Ch precinct, the drafters moved all but 1 of its 21 white residents out of HD 57, along with 528 blacks to majority-black HD 56.

In Pleasant Grove First Bapt Ch precinct, the drafters moved 3,450 blacks and 3,238 whites to HD 57 from majority-white HD 15.

HD 58, Jefferson County.

As noted above, the drafters fell -5.08% below their super-majority 78.08%

target in HD 58. In doing so, they split 12 precincts. A net total of 7,645 persons were added to HD 58 to bring it within $\pm 1\%$ deviation, 3,653 blacks and 3,613 whites.

The Clearview Bapt Ch precinct was located entirely in majority-white HD 44 in the 2001 plan. The drafters split Clearview Bapt Ch to put 642 whites and 628 blacks in majority-black HD 58 and HD 54, while leaving 3,496 whites and 801 blacks in majority-white HD 44.

To replace the black population moved out of HD 44 to majority-black HD 54 and HD 58, the drafters decimated the Pinson United Meth precinct, which had been located entirely in majority-white HD 51, moving 2,482 blacks and 716 whites to majority-black HD 58 and HD 59, 2,571 whites and only 545 blacks to majority-white HD 44, leaving only 123 whites and 12 blacks in HD 51.

In Barrett Elem Sch precinct, the drafters moved 909 blacks and 77 whites out of HD 58 to majority-black HD 59, which still left 1,400 blacks and 113 whites in HD 58.

In Brewster Road Bapt precinct, the drafters moved 512 blacks and 191 whites to HD 58 from majority-white HD 45.

In Ctr Point Ctse Annex precinct, the drafters moved 3,779 blacks and 2,295 whites to HD 58 from majority-white HD 44 and HD 45.

In First United Meth Ch precinct, the drafters moved 2,165 blacks and 676 whites to HD 58 from majority-white HD 45.

In Gate City Elem Sch precinct, the drafters moved 277 blacks and 19 whites out of HD 58 to majority-black HD 59, and moved 14 blacks and 0 whites to majority-black HD 54.

In Hilldale Bapt Ch precinct, the drafters moved 1,960 blacks and 917 whites to HD 58 from majority-white HD 44.

In Oporto Armory precinct, the drafters moved 671 blacks and 38 whites out of HD 58 to majority-black HD 54 and HD 59.

In Our Lady of Lourdes Cath Ch precinct, the drafters moved 87 blacks and 64 whites out of HD 58 to majority-black HD 54, leaving 3,604 blacks and 1,079 whites in HD 58.

In Robinson Elem Sch precinct, the drafters moved 1,728 blacks and 582 whites out of HD 58 to majority-black HD 54 and HD 59.

In Sun Valley Elem Sch precinct, the drafters moved 1,394 blacks and 184 whites out of HD 58 to majority-black HD 59.

HD 59, Jefferson County.

As noted above, the drafters reached and exceeded their 67.04% target for HD 59 by +9.76% at 76.8%. A net total of 12,380 persons were added to HD 59

to bring it within $\pm 1\%$ deviation, gaining 12,697 blacks while **losing** 588 whites.

The drafters split 12 precincts in the process.

The splits in Barrett Elem Sch, Ctr Point Ctse Annex, Gate City Elem Sch, Hilldale Bapt Ch, Oporto Armory, Pinson United Meth Ch, Robinson Elem Sch, and Sun Valley Elem Sch precincts are described above.

In Crestwood Comm Educ precinct, the drafters moved only 5 blacks and 1 white to HD 59 from majority-black HD 54.

In Morton Simpson Comm Ctr precinct, the drafters moved 1,506 blacks and 33 whites to HD 59 from majority-black HD 54.

In Norwood Comm Ctr precinct, the drafters moved 874 blacks and 57 whites out of HD 59 to majority-black HD 54.

In Willow Road Rec Ctr precinct, the drafters moved 1,714 blacks and 529 whites to HD 59 from majority-black HD 54.

Further evidence of racial fine tuning in the 11 precincts split among majority-black districts includes some small numbers, like 82 whites and 132 blacks moved to HD 59 in Barrett Elem Sch precinct, 5 blacks and 1 white moved to HD 59 in Crestwood Comm Educ precinct, and 14 blacks and 0 whites moved to HD 54 in Gate City Elem Sch precinct.

HD 60, Jefferson County.

The drafters met and exceeded, within 0.27%, their 67.63% target for HD 60. A net total of 8,380 persons were added to HD 54 to bring it within $\pm 1\%$ deviation, 5,771 blacks and 1,946 whites. To do so, the drafters split 11 precincts, only two of which were split between majority-black and majority-white districts.

The Fultondale Sr Citizen's Ctr precinct had been located entirely in majority-black HD 59 in the 2001 plan. But the drafters moved 3,136 whites and only 316 blacks **out** of HD 59 to majority-white HD 51, and 663 whites and 139 blacks out of HD 59 to majority-black HD 60, even though HD 59 was under-populated.

And, even though HD 60 was under-populated by 8,817 persons, or -19.37%, the drafters moved 12,504 whites and 838 blacks in Gardendale Civic Ctr precinct, which had been located entirely in HD 60, to majority-white HD 51. Only 297 whites and 295 blacks were left in HD 60.

HD 60 received a total of 2,961 blacks and 815 whites from four precincts cannibalized from HD 53: Glen Iris Elem Sch, Legion Field Lobby, Ramsey HS, and Southside Branch Pub Lib.

Jefferson County: The House districts that might have been.

The drafters worked under the unconstitutional assumption that they must maintain the black percentages in the Jefferson County House districts, and that

they must move enough populations based on race to hit these targets within an unnecessarily narrow $\pm 1\%$ population deviation. The Supreme Court's opinion says the Legislature should not have subordinated traditional districting principles in pursuit of arbitrary black percentages or restrictions on deviation not required to achieve substantial population equality.

The ALBC remand House plan draws 8 majority-black House districts in Jefferson County, ranging from 56.90% to 66.10% black, none of which exceeds substantial population equality at $\pm 5\%$, all of which are **over**-represented in population, and none of which splits a single 2010 precinct between districts. These are districts that demonstrate how the drafters could have complied with the Voting Rights Act, both § 2 and § 5, in a way that fully comports with both federal and state constitutional standards.

HD 67, Dallas and Perry Counties.

HD 67 presents a perfect example of how the drafters' unconstitutional racial percentage targets worked together with their $\pm 1\%$ deviation restriction to create a *Shaw* violation, subordinating Alabama's traditional districting principles to racial considerations. HD 67 lay entirely within Dallas County in the 2001 plan and was 69.14% black under 2010 census data. With a total population of 43,820, Dallas County by itself could have constituted a single House district that was

substantially equal at -3.74% deviation, as the ALBC remand House plan demonstrates. See Exhibits 5 and 6 to this brief.

Instead, to exceed their racial target – at 69.2, within 0.06% – the drafters extended HD 67 into Perry County, splitting four of the ten precincts in that small county, whose population was only 10,591. A net total of 7,200 persons were added to HD 67 to bring it within $\pm 1\%$ deviation, 4,984 blacks and 2,100 whites. To fine tune the black percentage, the drafters split the following precincts in Perry County:

Nat Guard Armory precinct, total population 2,035, moving only 28 whites and 180 blacks into HD 67;

Pinetucky precinct, total population 306, moving 95 whites and 82 blacks into HD 67;

UCH-Airport-Armory precinct, total population 2,304, moving 37 whites and 69 blacks into HD 67; and

Uniontown City Hall-Airport precinct, total population 2,330, moving 41 whites and 112 blacks into HD 67.

HD 68: Baldwin, Clarke, Conecuh, Marengo, Monroe, Washington Counties.

HD 68 may be the most egregious example of how the drafters combined

their racial percentage targets with their unnecessary $\pm 1\%$ deviation restriction to violate *Shaw*. A net total of 8,835 persons were added to HD 68 to bring it within $\pm 1\%$ deviation, 6,334 blacks and 2,049 whites. The drafters split six counties, subordinating the most important traditional districting principle in Alabama, and split 30 precincts in order to exceed their 62.50% target by only 2.1%. Not a single county is contained wholly inside HD 68. HD 68 takes:

a population of only 851 from Baldwin County, 269 of whom are black;
a population of 12,158 from Clarke County, 8,095 of whom are black;
a population of 8,286 from Conecuh County, 5,066 of whom are black;
a population of 6,198 from Marengo County, 4,432 of whom are black;
a population of 15,322 from Monroe County, 8,989 of whom are black; and
a population of only 2,254 from Washington County, 1,851 of whom are black. SDX 405.

The ALBC's remand House plan shows that HD 68 could have been drawn as a majority-black district without splitting Conecuh County at all and by splitting only two other counties, Monroe and Clarke. Given an ideal House population of 45,521, Monroe County must be split to prevent splitting Escambia County in HD 66, and Clarke County must be split to avoid splitting Choctaw and Washington Counties in HD 65. In the ALBC remand plan, HD 65, HD 66, and

HD 68 are all under-populated by less than 5%. HD 68 and HD 65 split only two precincts, both in Clarke County, more or less evenly dividing their populations between the two House districts. See Exhibits 5 and 6 to this brief.

In the Act 2012-602 House plan the drafters split two precincts in Baldwin County.

In Tensaw Volunteer Fire Dept precinct, the drafters moved 269 blacks and 75 whites to HD 68, leaving only 2 blacks and 10 whites in majority-white HD 64.

In Vaughn Comm Ctr precinct, the drafters moved 395 whites and 97 blacks to HD 68, leaving 43 blacks and 240 whites in majority-white HD 64.

The seven Clarke County precinct splits placed 4,809 blacks and 2,661 whites in HD 68. All seven precincts had been split by the 2001 plan between HD 68 and majority-white HD 65. The 2012 drafters systematically moved white population out of HD 68 into HD 65 in each split precinct.

In BASHI Meth Ch precinct, the drafters moved 2,165 whites and 148 black **out** of underpopulated HD 68 to majority-white HD 65.

In Fulton City Hall precinct, the drafters moved 997 blacks into HD 68 from majority-white HD 65, and moved 315 whites **out** of HD 68.

In Jackson City Hall precinct, the drafters moved 2 blacks into HD 68

from majority-white HD 65, but took 170 whites **out** of HD 68.

In Old Engineers Bldg precinct, the drafters moved 42 blacks and 47 whites to HD 68 from majority-white HD 65.

In Overstreet Grocery precinct, the drafters moved 47 blacks and 104 whites **out** of HD 68 to majority-white HD 65.

In Skipper Fire Station-Jackson Nat Guard precinct, the drafters moved 146 blacks into HD 68 from majority-black HD 65, but moved 168 whites **out** of HD 68.

In Thomasville Nat Guard Armory precinct, the drafters moved 11 blacks and 281 whites **out** of HD 68 to majority-white HD 65.

The six Conecuh County precinct splits placed 898 blacks and 460 whites in HD 68.

In Brownville Fire Dept precinct, the drafters moved 22 blacks and 18 whites to HD 68 from majority-white HD 90.

In Castleberry Fire Dept. 2 precinct, the drafters moved 157 blacks and 11 whites into HD 68 from majority-white HD 90.

In Lyeffion Fire Dept precinct, the drafters moved 51 blacks and 88 whites to HD 68 from majority-white HD 90.

In Nazarene Bapt Ch precinct, the drafters moved 283 blacks and 128

whites to HD 68 from majority-white HD 64.

In Repton City Hall precinct, the drafters moved 45 blacks and 289 whites **out** of HD 68 to majority-white HD 90.

In Second Mount Zion Ch precinct, the drafters moved 51 blacks and 18 whites to HD 68 from majority-white HD 90.

The six Marengo County precinct splits placed 2,295 blacks and 809 whites in HD 68.

In Cornerstone Ch precinct, the drafters moved 606 blacks and 74 whites to HD 68 from majority-black HD 71 and HD 72.

In Demopolis HS precinct, the drafters moved 15 blacks and 14 whites to HD 68 from majority-black HD 71 and HD 72.

In Dixon's Mill precinct, the drafters moved 1,224 blacks and 133 whites to HD 68 from majority-black HD 72.

In Octagon precinct, the drafters moved 26 blacks into HD 68 from majority-black HD 72, and moved 8 whites out of HD 68.

In Springhill Voting Booth precinct, the drafters moved 21 blacks and 76 whites to HD 68 from majority-black HD 71.

In Thomaston precinct, the drafters moved 400 blacks and 168 whites to HD 68 from majority-black HD 72.

In VFW precinct, the drafters moved 589 blacks and 341 whites to HD 68 from majority-black HD 71 and HD 72.

Six of the Monroe County precincts split, Excel/Coleman, Frisco City FD, Mexia Fire Dept., Monroeville Armory, Oak Grove Bapt, and Shiloh/Grimes, had all been located entirely in majority-white HD 64 in the 2001 plan. The drafters moved 2,069 blacks and 2,196 whites out of HD 64 into HD 68, leaving only 317 blacks but 3,789 whites in HD 64. All 652 blacks were stripped out of HD 64 in the Frisco City FD precinct, all 9 in Oak Grove Bapt, and all but 1 in Shiloh/Grimes. The Purdue Hill precinct had been located entirely in old HD 68, and the drafters moved 18 whites **out** of HD 68 into HD 64 without including a single black resident.

Similarly, all four of the Washington County split precincts had been located entirely in majority-white HD 65 in the 2001 plan. The drafters moved 1,490 blacks and only 137 whites in these four precincts into HD 68, leaving only 242 blacks left in HD 65.

HD 69, Autauga, Lowndes, and Montgomery Counties.

The drafters met and exceeded, within 0.09%, their 64.11% target for HD 69. A net total of 7,905 persons were added to HD 69 to bring it within $\pm 1\%$ deviation, 5,096 blacks and 1,864 whites. To do so, the drafters split the

boundaries of both Autauga and Montgomery Counties, 2 precincts in Autauga County and 9 precincts in Montgomery County. The ALBC remand House plan demonstrates that HD 69 could have been drawn with a deviation under 5% and a 50.61% black total population majority, splitting only Autauga County and 3 of its precincts, leaving Montgomery, Lowndes and Butler Counties whole.

In Autauga County, Booth Vol Fire Dept precinct was unchanged, and in Safe Harbor Ministries precinct, the drafters moved 245 blacks and 263 whites to HD 69 from majority-white HD 89, and 318 blacks and 2,880 whites to majority-white HD 42, leaving 503 blacks and 2,775 whites in majority-white HD 88.

In Montgomery County the following precincts were split:

In 1F Al. Ind Dev Training precinct, the drafters moved only 4 blacks and 0 whites to HD 69 from majority-black HD 76.

In 2D Montgomery Boys Club precinct, the drafters moved 422 blacks and 397 whites to HD 69 from majority-black HD 78.

In 2F Fire Station No. 14 precinct, the drafters moved 1,758 blacks and 243 whites to HD 69 from majority-black HD 78.

In 2G Hayneville Road Comm Ctr precinct, the drafters moved 693 blacks and 118 whites to HD 69 from majority-black HD 78.

In 2I Southlawn Elem Sch precinct, the drafters moved 354 blacks

and 82 whites to HD 69 from majority-black HD 76.

In 5B Snowdoun Womens Club precinct, the drafters moved 3 blacks and 51 whites to HD 69 from majority-black HD 76.

In 5D Ramer Library precinct, the drafters moved 61 blacks and 2 whites to HD 69 from majority-black HD 76.

In 5E Fitzpatrick Elem precinct, the drafters moved 2,276 blacks and 331 whites to HD 69 from majority-white HD 73, and moved 23 blacks and 230 whites **out** of majority-black HD 76 to HD 69 and majority-white HD 73.

In 5N Peter Crump Sch precinct, the drafters moved 1,624 blacks and 57 whites to HD 69 from majority-black HD 76.

HD 70, Tuscaloosa County.

The drafters met and exceeded, within 0.31%, their 61.89% target for HD 70. A net total of 6,717 persons were added to HD 70 to bring it within $\pm 1\%$ deviation, 4,245 blacks and 1,710 whites. To do so the drafters split 9 precincts, 6 between HD 70 and majority-white HD 62 and HD 63, and 3 between HD 70 and majority-black HD 71.

In the 6 precinct splits between HD 70 and majority-white districts, 16,918 blacks and 11,835 whites were placed in HD 70, leaving 1,318 blacks and 6,619 whites in the majority-white districts.

Bama Mall precinct had been located entirely in HD 70, but the drafters moved 460 whites and only 25 blacks **out** of HD 70 into majority-white HD 63.

Holt Armory precinct had been located entirely in majority-white HD 62 and HD 63, but the drafters moved 2,471 blacks and 1,178 whites into HD 70.

Jayces Park precinct had been located entirely in majority-white HD 63, but the drafters moved 3,857 blacks and 2,536 whites into HD 70, leaving only 29 whites and 0 blacks in HD 63.

In McFarland Mall precinct, the drafters moved 6,947 blacks and 5,571 whites to HD 70 from majority-white HD 63 and HD 62.

Peterson Meth Ch and University Mall precincts both had been split between majority-white HD 62 and HD 63 in 2001, but the drafters moved 329 blacks and only 66 whites into HD 70.

The split of Southside Comm Ctr precinct between two majority-black districts, HD 70 and HD 71, reveals telltale signs of racial fine tuning. Only 19 blacks and 17 whites were moved out of HD 70 into HD 71.

The ALBC remand House plan demonstrates that HD 70 could have been drawn inside Tuscaloosa County with a +0.71% population deviation and a

57.21% black total population percentage, without splitting a single precinct.¹⁸

HD 71, Pickens, Tuscaloosa, Greene, Sumter, Marengo, and Choctaw Counties.

The drafters met and exceeded, within 2.62%, their 64.28% target for HD 71. A net total of 7,250 persons were added to HD 71 to bring it within $\pm 1\%$ deviation, 5,582 blacks and 1,009 whites. To do so, the drafters split the boundaries of 6 counties, not one of which is contained whole inside HD 71. And they split precincts in all 6 counties, 24 split precincts altogether. The ALBC remand House plan demonstrates that HD 71 could have been drawn simply by linking three whole counties, Sumter, Marengo, and Wilcox, yielding a population deviation of +2.06% and a total black majority of 63.82%.

Among the 24 split precincts, 9 are split between majority-black districts. Taken together, they are evidence of the drafters' attempt to bring HD 70, HD 71, and HD 72 as close to their target black percentages as possible. We referred above to the racial fine tuning in Tuscaloosa precinct Southside Comm Ctr. But the same could be said about the splits between HD 71 and HD 72 in the Greene County Ctse precinct, the splits between HD 68, HD 71, and HD 72 in the

¹⁸ The County Courthouse precinct is split in the ALBC plan between two majority-white districts, HD 61 and HD 63 to reduce HD 63's deviation to +4.35%.

Marengo County precincts Demopolis HS and Springhill Voting Booth, and the split between HD 71 and HD 72 in the Sumter County precinct Coatopa Fire Dept.

In the 15 precinct splits between HD 71 and majority-white districts, 6,676 blacks and 4,539 whites were placed in HD 71, while 6,472 whites and 4,754 blacks were left in the majority-white districts.

In Choctaw County, the following precincts were split:

In Butler-Lavaca precinct, the drafters moved 120 blacks and 11 whites to HD 71 from majority-white HD 65 and majority-black HD 68.

In Crossroads-Lavaca precinct, all of the 471 blacks and all but 15 whites who previously had been in majority-black HD 68 were moved into HD 71, and the remaining 15 whites were moved **out** of HD 68 to majority-white HD 65.

In Lisman-Pushmataha precinct, the drafters moved 817 blacks and 90 whites to HD 71 from majority-black HD 68.

In Riderwood-Rock Spr precinct, the drafters moved 140 blacks and 21 whites to HD 71 from majority-white HD 65 and majority-black HD 68, and all remaining 153 blacks and 120 whites were moved **out** of HD 68 to majority-white HD 65, leaving 195 blacks and 361 whites in HD 65.

In Greene County, the following precincts were split:

In Eutaw Pre-School precinct, the drafters moved 105 blacks and 100

whites out of HD 71 to majority-black HD 72.

In Greene County Cthse precinct, the drafters moved 87 blacks and 20 whites out of HD 71 to majority-black HD 72, leaving only 21 blacks and 14 whites in HD 71.

In W Greene Fire Dept precinct, the drafters moved just 1 black person and 11 whites **out** of HD 71 to majority-white HD 61.¹⁹

In Marengo County the following precincts were split:

In Demopolis HS precinct, the drafters moved 19 blacks and 5 whites out of HD 71 to majority-black HD 72, and they moved 15 blacks and 14 whites out of HD 71 to majority-black HD 68.

In Jefferson precinct, 75 whites and only 3 blacks were moved **out** of HD 71 into majority-white HD 65.

In the Rangeline precinct, 243 whites and 74 blacks were moved **out** of HD 71 to majority-white HD 65, leaving only 16 whites and 1 black in HD 71.

In Springhill Voting Booth precinct, the drafters moved 20 blacks and 76 whites out of HD 71 to majority-black HD 68.

In Pickens County precincts Aliceville 2 Nat'l Guard Armory and

¹⁹ This was the famous 12-person incursion of HD 61 in Greene County at the request of the white incumbent.

Carrollton 4 Service Ctr, 1,832 blacks and 613 whites were moved to HD 71 from majority-white HD 61.

The following precincts were split in Sumter County:

In Coatopa Fire Dept precinct, the drafters moved 191 blacks and 127 whites out of HD 71 to majority-black HD 72.

In Livingston Comm Ctr precinct, the drafters moved 2,740 blacks and 1,373 whites out of majority-black HD 71 to majority-black HD 72.

The following precincts were split in Tuscaloosa County:

In Bama Mall precinct, the drafters moved 156 blacks and 156 whites to HD 71 from majority-black HD 70, and moved 25 blacks and 460 whites **out** of majority-black HD 70 to majority-white HD 63.

In County Cthse precinct, the drafters moved 116 blacks and 45 whites to HD 71 from majority-black HD 70, and moved 741 blacks and 4,672 whites **out** of majority-black HD 70 to majority-white HD 63.

In McDonald Hughes Ctr precinct, the drafters moved 588 blacks and 46 whites to HD 71 from majority-black HD 70.

In Northport Comm Ctr precinct, the drafters moved 1,700 blacks and 2,291 whites to HD 71 from majority-black HD 70.

In Stillman College precinct, the drafters moved 5,646 blacks and 301

whites to HD 71 from majority-black HD 70, leaving 1,073 blacks and only 8 whites in HD 70.

HD 72, Sumter, Greene, Hale, Marengo, Perry, and Bibb Counties.

The drafters reached and exceeded their HD 72 target of 60.12% black by 4.38%. A net total of 5,932 persons were added to HD 72 to bring it within $\pm 1\%$ deviation, 5,566 blacks and only 183 whites. To do so, the drafters split five counties. Only Hale County is wholly contained in HD 72. The ALBC remand House plan demonstrates that HD 72 could have been drawn to split only one County, Bibb, while maintaining whole Greene, Hale, and Perry Counties, with a population deviation of -4.34% and a 62.65% black total population.

The drafters split 14 precincts, some of which have already been discussed in connection with HD 67, HD 68, and HD 71.

The following precincts in Bibb County were split:

The strangely numbered Brent City Hall precincts were all located in majority-black HD 72. But the drafters moved just 4 blacks and 63 whites **out** of HD 72 to majority-white HD 49.

In the Brent Nat Guard Armory precinct, the drafters moved 7 blacks and 260 whites **out** of HD 72 to majority-white HD 49.

Similarly, all but 90 persons in the Eoline Fire Dept. precincts were

located in HD 72, but the drafters moved just 44 blacks and 698 whites **out** of HD 72 to majority-white HD 49.

In the Rock Bldg Dept precincts, the drafters moved 319 blacks and 362 whites to HD 72 from majority-white HD 49.

The following precincts were split in Greene County:

In Eutaw Pre-School precinct, the drafters moved 105 blacks and 100 whites to HD 72 from majority-black HD 71.

In Greene County Cthse precinct, the drafters moved 87 blacks and 20 whites to HD 72 from majority-black HD 71, leaving just 21 blacks and 14 whites in HD 71.

In Marengo County precinct Demopolis HS, the drafters moved just 19 blacks and 5 whites to HD 72 from majority-black HD 71.

The precinct splits in Perry County between HD 72 and HD 67 are discussed above.

The following precincts in Sumter County were split:

In Coatopa Fire Dept precinct, the drafters moved 191 blacks and 127 whites out of HD 72 to majority-black HD 71.

In Livingston Comm Ctr precinct, the drafters moved 2,740 blacks and 1,373 whites out of HD 72 to majority-black HD 71.

HD 76, Montgomery County.

All three majority-black House districts in Montgomery County, HD 76, HD 77, and HD 78, had super-majorities of 69.56%, 73.58%, and 74.34% black. HD 76 was underpopulated by only 627 persons (-1.38%), but HD 77 was underpopulated by 10,523 persons (-23.12%), and HD 78 was underpopulated by 14,641 persons (-32.16%). The drafters had to find a lot of additional black population if they were to reach their black percentage targets in Montgomery County.

The main tactic the drafters used to attempt reaching their black percentage targets in these three districts was to dismember HD 73, a black plurality district at 48.44%, and to use portions of it to add to the neighboring majority-black districts. As Randy Hinaman put it, “District 73 was cannibalized if you will to repopulate [HDs] 77, 78, and 76.” Doc. 134-4, APX 75, at 142. This Court found: “Hinaman moved House District 73, a majority-white [sic] House district, from Montgomery County to Shelby and Bibb Counties to avoid retrogression of the majority-black House districts in Montgomery County.” 989 F.Supp.2d at 1249. As was the case with HD 53 in Jefferson County, the cannibalization of HD 73 **by definition** taints all the majority-black House districts in Montgomery County by subordinating to an unconstitutional racial consideration the traditional districting principles of

preserving the cores of existing districts and avoiding incumbent conflicts.

It is true, of course, that both the $\pm 1\%$ deviation plan Representative McClammy drew and the ALBC remand House plan move HD 73 out of Montgomery County. But in both those cases HD 73 was moved for the sake of avoiding splitting the boundaries of Montgomery County, the most important traditional districting principle in Alabama, not for the unconstitutional reason of seeking to maintain target black percentages.

The drafters exceeded their 69.56% target for HD 76 by +4.38% at 73.9%. A net total of 1,078 persons were added to HD 76 to bring it within $\pm 1\%$ deviation, adding 2,706 blacks and **removing** 3,164 whites.

Using black populations cannibalized from HD 73, the drafters of Act 2012-602 were able to exceed their target for HD 76, raising it to 73.9% black, but they were unable to find enough black population to hit their targets for HD 77 and HD 78. The 106,083 blacks included in majority-black HD 69, HD 76, HD 77, and HD 78 constituted 81.21% of the entire black population of Montgomery County. After giving up 3,510 persons to help HD 90 get within 1% deviation, only 62,742 whites were left to populate majority-white HD 74 and HD 75. The drafters needed an additional 28,300 non-white population to achieve ideal equality in HD 74 and HD 75, so they needed all of the 24,537 blacks left out of the majority-

black districts. In short, there were no more blacks available to pack into HD 76, HD 77, and HD 78.

Even so, the drafters reached super-black majorities of 67.0% in HD 77 and 70.2% in HD 78, splitting Montgomery County three times, in HD 69, HD 75, and HD 90, and splitting many precincts, as the following discussion shows. By contrast, the ALBC remand House plan keeps Montgomery County whole and splits only two precincts to reduce population deviations (HD 74 is +1.52%, HD 75 is -1.20%, HD 76 is +1.85%, HD 77 is +4.00%, and HD 78 is -2.31%).

The drafters split 9 precincts in HD 76, and 4 of them came from cannibalized HD 73: 1A Cloverdale Comm Ctr, 1E Aldersgate UMC, 5E Fitzpatrick Elem, and 5M Bell Road YMCA. The only split between HD 76 and majority-white districts is in 5M Bell Road YMCA, where 1,918 blacks and 1,879 whites were moved to HD 76 from majority-white HD 73, while 3,835 whites and only 827 blacks were moved into majority-white HD 74 and HD 75.

The splits in four precincts, 1F Al. Ind Dev Training, 5B Snowdown Womens Club, 5E Fitzpatrick Elem, and 5N Peter Crump Sch, moved a total of 4,735 blacks and 439 whites into majority-black HD 69, splitting the Montgomery County boundary, to enable the drafters of HD 69 to exceed its racial target by only 0.09%.

HD 77, Montgomery County.

The drafters fell short of their 73.58% black target for HD 77 by -6.58% at 67.0%. A net total of 10,956 persons were added to HD 77 to bring it within $\pm 1\%$ deviation, 5,077 blacks and 5,288 whites.

HD 77 has 10 split precincts, 3 of which come from cannibalized HD 73: 1A Cloverdale Comm Ctr, 1B Vaughn Park Ch of Christ, and 1E Aldersgate UMC. These three splits moved 9,165 blacks and 3,689 whites to HD 77 from HD 73 and majority-white HD 74 (1A Cloverdale Comm Ctr was already split between HD 73 and HD 77).

In 3A Capitol Hts Bapt Ch precinct, the drafters moved 236 blacks and 222 whites to HD 77 from majority-white HD 74.

In 4D Hamner Hall Fire Station precinct, the drafters moved a mere 4 blacks and 8 whites out of HD 77 to majority-black HD 78.

In 4F Newtown Comm Ctr precinct, the drafters moved 1,247 blacks and 249 whites out of HD 77 to majority-black HD 78.

In 4G King Hill Comm Ctr precinct, the drafters moved 1,244 blacks and 1,344 whites out of HD 77 to majority-black HD 78.

In 4M McIntyre Comm Ctr precinct, the drafters moved 2,178 blacks and all 52 whites out of HD 77 to majority-black HD 78.

In 4N Highland Avenue Bapt Ch precinct, the drafters moved 0 blacks and just 4 whites out of HD 77 to majority-white HD 74.

HD 78, Montgomery County.

At 70.2% black, the drafters failed to hit their 74.34% target by -4.14%, but not for lack of trying, as the census figures above show. A net total of 15,077 persons were added to HD 78 to bring it within $\pm 1\%$ deviation, 9,237 blacks and 3,822 whites. To capture every available black population, keeping the deviation within 1%, the drafters split 12 precincts. Only two splits were between HD 78 and majority-white HD 74.

In 3F Goodwyn Comm Ctr precinct, the drafters moved 436 blacks and 259 whites to HD 78 from majority-white HD 74.

In 4K Chisholm Comm Ctr precinct, the drafters moved all 1,965 blacks and some 974 whites to HD 78 from HD 74, leaving only 10 whites and 0 blacks in HD 74.

Among the precincts split between majority-black House districts, fine tuning is evident.

In 2B Beulah Bapt Ch precinct, the drafters moved 2,938 blacks and 21 whites out of HD 78 to majority-black HD 76.

In 2D Montgomery Boys Club precinct, the drafters moved 422

blacks and 397 whites out of HD 78 to majority-black HD 69.

In 2F Fire Station No. 14 precinct, the drafters moved 1,758 blacks and 243 whites out of HD 78 to majority-black HD 69.

In 2G Hayneville Road Comm Ctr precinct, the drafters moved 693 blacks and 118 whites out of HD 78 to majority-black HD 69.

In 2H Harrison Elem Sch precinct, the drafters moved 472 blacks and 5 whites out of HD 78 to majority-black HD 76.

In 2I Southlawn Elem precinct, the drafters moved 5 whites and 0 blacks to HD 78 from majority-black HD 76.

The splits between HD 78 and majority-black HD 77 in 4D Hamner Hall Fire Station, 4F Newtown Comm Ctr, 4G King Hill Comm Ctr, and 4M McIntyre Comm Ctr precincts are described above in the HD 77 analysis.

HD 82, Macon, Lee, and Tallapoosa Counties.

The drafters reached and exceeded their 57.18% black target for HD 82 by 5.02% at 62.2%. A net total of 2,469 persons were added to HD 82 to bring it within $\pm 1\%$ deviation, adding 3,707 blacks and **removing** 955 whites. To do so, the drafters split two counties, Lee and Tallapoosa, and 6 precincts. The ALBC remand House plan demonstrates that HD 82 could have been drawn with a +4.84% population deviation and 66.46% black total population to include Macon

and Bullock counties whole and a portion of Pike County, splitting no precincts.

In Lee County, the Auburn and Opelika B precincts are very large and likely must be split between House districts. But the drafters clearly split them along racial lines.

In the Auburn precinct, 12,254 whites but only 35 blacks were moved **out** of HD 82 to majority-white HD79.

In Beuaregard School precinct, 3,758 whites and 982 blacks had been in HD 82, and 1,028 whites and 85 blacks had been in majority-white HD 79. The drafters moved all but 1 black person out of HD 79 and split most of the black population between HD 82 and majority-black HD 83.

The Opelika B precinct had been split between majority-white HD 38 and HD 79 and majority-black HD 83. Only 3 whites and 3 blacks had been assigned to HD 38. The black population had been split 2,189 in HD 79 and 9,943 in HD 83. The drafters moved all but 1,015 blacks into majority-black HD 82 (1,663) and HD 83 (10,704).

The drafters split Tallapoosa County in two noncontiguous parts of HD 82, one a long arm reaching into Dadeville in the middle of the county and the other taking a corner of south Tallapoosa County near Tallassee. All three Tallapoosa County precincts, Dadeville Nat Guard Armory, Mary's Cross Road Voting

House, and Wall Street Comm Ctr, had been contained entirely in majority-white HD 81. The drafters moved 2,370 blacks and 1,442 whites out of those three precincts into majority-black HD 82, leaving only 339 blacks and 1,626 whites behind in HD 81.

HD 83, Lee, Chambers, and Russell Counties.

The drafters reached and exceeded their 57.03% black target for HD 83 by only 0.67%. A net total of 4,934 persons were added to HD 83 to bring it within $\pm 1\%$ deviation, 3,086 blacks and 1,380 whites. To do so, the drafters split the Lee County boundary in 4 House districts, the Russell County boundary in 3 districts, and the Chambers County boundary in 2 districts. The ALBC remand House plan demonstrates that HD 83 could have been drawn entirely within Lee County at 38.58% black with a -3.41% deviation, allowing Lee and Russell Counties to be split only once, in HD 14, and leaving Chambers County whole in HD 38.

The drafters split 11 precincts in HD 83, 5 in Lee County and 6 in Russell County. The following precincts were split in Lee County:

The splits of Beuaregard School and Opelika B Voting District along racial lines are discussed above with HD 82.

The Lee County Snacks Voting District had 605 whites and 281 blacks in majority-white HD 79. But the drafters moved all but 3 blacks and 103

whites out of HD 79 into HD 83.

In Old Salem School precinct the drafters moved 143 blacks and 188 whites to HD 83 from majority-white HD HD 38 and HD 79.

Smiths Station Sr. Ctr precinct had 376 whites and 138 blacks in majority-black HD 83, but the drafters moved 156 of those whites **out** of HD 83 into majority-white HD 38 and HD 80, leaving all 138 blacks in HD 83.

The following precincts were split in Russell County:

In Austin Sumbry Park precinct, the drafters moved 61 blacks and 281 whites to HD 83 from majority-white HD 80.

In Crawford Fire Dept precinct, the drafters moved 329 blacks and 555 whites to HD 83 from majority-white HD 80.

In CVCC precinct, the drafters moved 1,717 blacks and 741 whites to HD 83 from majority-white HD 80, leaving only 9 blacks and 16 whites in HD 80.

In Ladonia Fire Dept precinct, the drafters moved just 61 blacks and 7 whites to HD 83 from majority-white HD 80, leaving 922 blacks and 6,139 whites in HD 80.

In Nat Guard Armory precinct, the drafters moved 2,593 blacks and 1,189 whites to HD 83 from majority-white HD 80.

In Seale Cthse precinct, the drafters moved 186 blacks and 305 whites

to HD 83 from majority-black HD 84.

HD 84, Bullock, Barbour and Russell Counties.

The drafters reached and exceeded their 50.7% black target for HD 84 by 1.73% at 52.4%. A net total of 4,652 persons were added to HD 84 to bring it within $\pm 1\%$ deviation, 3,155 blacks and 1,362 whites. Apparently to get HD 84's population deviation under 1% at +0.98% while keeping HD 83's deviation under 1% at +0.99%, in the single split precinct, Seale Cthse, the drafters moved 186 blacks and all 305 whites out of HD 84 into HD 83, which lowered HD 83's target black percentage closer to only 0.67% above its target, while raising HD 84's black percentage to 1.73% above its target.

HD 85, Henry and Houston County.

The drafters reached and exceeded their 47.94% black target in HD 85, raising it from a black plurality district to a majority-black 50.08% by total population. (It remained a voting-age black plurality district at 47.22%.) A net total of 2,800 persons were added to HD 85 to bring it within $\pm 1\%$ deviation, 2,311 blacks and 287 whites. To do so, the drafters split 9 precincts in Houston County along racial lines.

In Doug Tew Comm Ctr precinct, the drafters moved 1,418 blacks and 1,763 whites to HD 85 from majority-white HD 86.

In Farm Ctr precinct, the drafters moved just 16 blacks and 12 whites to HD 85 from majority-white HD 86.

In Johnson Homes precinct, the drafters moved 8 blacks and 129 whites **out** of HD 85 to majority-white HD 86.

In Kinsey precinct, the drafters moved 91 blacks and 691 whites **out** of HD 85 to majority-white HD 86.

In Library precinct, the drafters moved 301 blacks and 2,129 whites **out** of HD 85 to majority-white HD 86 and HD 87.

In Lincoln Comm Ctr precinct, the drafters moved 10 blacks and 26 whites to HD 85 from majority-white HD 86.

In Vaughn Blumberg Ctr precinct, the drafters moved 558 blacks and 605 white to HD 85 from majority-white HD 93.

In Westgate Rec Ctr precinct, the drafters moved only 19 blacks and 14 whites to HD 85 from majority-white HD 87 and HD 93.

In Wiregrass Park precinct, the drafters moved 690 blacks and 1,062 whites to HD 85 from majority-black HD 86.

HD 97, Mobile County.

The drafters reached and exceeded their 60.73% black target in HD 97 by only 0.07%. But they fell short of their super-majority targets in the other three

majority-black Mobile County House districts, 65.23%, 73.45%, and 69.90%. There simply was not enough contiguous black population available. As it is, 113,196 of the 142,992 black residents of Mobile County were placed in one of the majority-black districts, leaving only 29,796 blacks to be shared by five majority-white districts, including HD 96, which splits the Mobile County boundary and lies mostly in Baldwin County.

A net total of 9,665 persons were added to HD 97 to bring it within $\pm 1\%$ deviation, 5,863 blacks and 3,481 whites. To get HD 97 up to 60.8% black, the drafters had to split 9 precincts.

In 100 Black Men of Greater Mobile precinct, 230 blacks and no whites were moved to HD 97 from majority-black HD 98.

In Chickasaw Auditorium precinct, 1,143 blacks and 2,743 whites were moved to HD 97 from majority-black HD 96 and HD 98.

In Rock of Faith Bapt Ch precinct, 1,569 blacks and 21 whites were moved into HD 97 from majority-black HD 103.

In Saraland Civic Ctr precinct, 101 blacks and 161 whites were moved into HD 97 from majority-black HD 96 and HD 98.

In St. Andrews Episcopal precinct, 567 blacks and 545 whites were moved into HD 97 from majority-black HD 103 and majority-white HD 105.

In Vigor HS precinct, 824 blacks and 38 whites were moved into HD 97 from majority-black HD 98.

The splits in Figures Rec Ctr and Murphy HS Library precincts were unchanged from 2010.

HD 98, Mobile County.

The drafters fell short of their 65.23% target for HD 98 by -5.23%. The fact that they split 13 precincts is evidence they did not fail for lack of trying. A net total of 7,238 persons were added to HD 98 to bring it within $\pm 1\%$ deviation, 2,376 blacks and 4,426 whites.

As noted above, in 100 Black Men of Greater Mobile, Chickasaw Auditorium, and Saraland Civic Ctr precincts HD 98 donated 1,474 blacks to help HD 97 hit its racial target.

In College Park Bapt Ch precinct, the drafters moved 209 blacks and 1,259 whites **out** of HD 98 to majority-white HD 102 and majority-black HD 99, leaving 0 blacks in HD 102.

In First Bapt Ch of Axis, 1,790 whites and 496 blacks were moved into HD 98 from majority-white HD 102 and majority-black HD 96, leaving 111 blacks and 520 whites in HD 102.

In Joseph Dotch Comm. Ctr precinct, 1,246 blacks and 17 whites

were moved to HD 98 from majority-black HD 99, leaving only 24 whites in HD 98 and 5 whites in HD 99.

In Little Welcome Bapt precinct, 1,238 blacks and 185 whites were moved to HD 98 from majority-black HD 99, and 101 whites and 87 blacks were moved **out** of HD 99 to majority-white HD 102.

In Satsuma City Hall and Shelton Beach Rd. Bapt Ch precincts, 996 blacks and 2,603 whites were moved to HD 98 from majority-white HD 96 (most of which lies in Baldwin County), leaving 3,167 whites and only 168 blacks in HD 96.

In Turnerville Comm precinct, 96 blacks and 1,167 whites were moved to HD 98 from majority-white HD 102, leaving 2,994 whites and only 86 blacks in HD 102.

There was no change in the Havenwood Bapt Ch precinct.

HD 99, Mobile County.

The drafters fell short of their super-majority 73.45% target for HD 99 by - 7.75%, reaching 65.7%. The fact that, as in HD 98, they split 13 precincts is evidence they did not fail for lack of trying. A net total of 5,278 persons were added to HD 99 to bring it within $\pm 1\%$ deviation, 386 blacks and 4,465 whites.

Many of the split precincts in HD 99 have been discussed in analyses

of HD 97 and HD 98. The following precinct splits display clear racial patterns.

In Friendship Missionary Bapt Ch precinct, 158 whites and only 7 blacks were moved **out** of HD 99 to majority-white HD 101.

In Pleasant Valley Meth precinct, the drafters moved 1,072 blacks and 1,548 whites to HD 99 from majority-black HD 103 and majority-white HD 101, leaving no blacks at all in HD 101.

In Semmes First Bapt precinct the drafters moved 437 blacks and 393 whites to HD 99 from majority-white HD 102.

In St. John UMC precinct, the drafters moved 202 blacks and 505 whites **out** of HD 99 to majority-white HD 101.

In University Ch of Christ precinct the drafters moved a mere 45 blacks to HD 99 from majority-white HD 101, but moved 417 whites **out** of HD 99 to HD 101.

HD 103, Mobile County.

The drafters fell short of their super-majority 69.90% target for HD 103 by - 4.6%, reaching 65.3%. The fact that they split 10 precincts is evidence they did not fail for lack of trying. A net total of 4,464 persons were added to HD 103 to bring it within $\pm 1\%$ deviation, 1,043 blacks and 2,330 whites.

The racial splits in Pleasant Valley Meth Ch, Rock of Faith Bapt Ch,

and St. Andrews Episcopal precincts have already been discussed above.

In Bay of Holy Spirit Ch precinct, 2,440 blacks and 1,687 whites were moved to HD 103 from majority-white HD 101.

In Dodge School precinct, 123 blacks and only 1 white were moved to HD 103 from majority-white HD 104.

In First Independent Meth precinct, 119 blacks and only 2 whites were moved to HD 103 from majority-white HD 104.

In Hollingers Island Sch precinct, 202 whites and 0 blacks were moved **out** of HD 103 to majority-white HD 105.

In Kate Shepard School precinct, 304 blacks and 316 whites were moved to HD 103 from majority-white HD 104.

In St Philip Neri Ch precinct, 186 blacks and 62 whites were moved to HD 103 from majority-white HD 105.

In The Mug Café precinct, 84 blacks and 14 whites were moved to HD 103 from majority-white HD 101.

F. *Examination of the Majority-black Senate Districts.*

As was the case with the majority-black House districts, mere eyeball review of the county boundary splits and precinct splits makes it obvious that the drafters of the 2012 Senate districts routinely subordinated Alabama's traditional

districting principles to race by moving as many black residents as possible into the majority-black districts, while minimizing the number of whites who unavoidably had to come with them. We will do the math in the following district-by-district analyses that confirms this racial pattern. This entails comparing the precinct splits in Appendix E to Exhibit 2 to this brief, which lists the numbers of whites and blacks in each precinct as of 2010 and thus was the starting point for the drafters.

SD 18, Jefferson County.

There simply was not enough black population in Jefferson County to allow reaching the drafters' racial targets in the three majority-black Senate districts. In the 2010 census there were only 280,082 black residents of Jefferson County, and the Act 2012-603 Senate plan placed 253,635 (90.5%) of them in majority-black SD 18, SD 19, and SD 20. SDX 401. The remaining 26,447 blacks obviously were too dispersed in census blocks noncontiguous to the majority-black districts; otherwise, given the drafters' willingness to populate all five of the 5 majority-white Jefferson County Senate districts with majority-white populations in other counties, they would have reached their racial targets in at least some of the 3 majority-black districts.

But the drafters tried nonetheless. They came within -0.81% of their

59.93% target for SD 18. A net total of 22,786 persons were added to SD 18 to bring it within $\pm 1\%$ deviation, 12,550 blacks and 9,091 whites. See Exhibit 4 to this brief. To do so, the drafters split 5 precincts. The relatively large numbers of whites they had to move into SD 18 to round up additional black population show how dispersed blacks were at the outer margins of the majority-black districts.

In Homewood Pub Lib precinct, 399 blacks and 399 whites were moved to SD 18 from majority-white SD 16, leaving only 60 blacks and 5,952 whites in SD 16.

In Mountain Brook City Hall precinct, the drafters moved 60 blacks and 844 whites to SD 18 from majority-white SD 15, leaving only 9 blacks and 3,903 whites in SD 15.

Birmingham Botanical Gardens precinct had been located entirely in SD 18, but the drafters moved 933 whites and 12 blacks **out** of SD 18 to majority-white SD 15.

Muscoda Comm Ctr precincts (there are two of them) had been split among majority-black SD 18 and SD 19 and majority-white SD 14 and SD 16. The drafters moved 317 blacks and 651 whites into SD 18 and 256 blacks and 593 whites into majority-black SD 19, stripping all 22 blacks and 438 whites out of SD 16.

In an apparent effort to raise at least one of the three majority-black Senate districts up to its target percentage, in Robinson Elem precinct 3,445 blacks and 636 whites were moved to SD 18 from majority-black SD 20, leaving 824 blacks and 547 whites in SD 20.

SD 19, Jefferson County.

The drafters fell short of their super-majority target of 71.65% for SD 19 by -6.26%, thus leaving a large black majority at 65.39%. A net total of 26,053 persons were added to SD 19 to bring it within $\pm 1\%$ deviation, 10,165 blacks and 15,188 whites. To do so, the drafters split 5 precincts along racial lines.

In Valley Creek Bapt Ch and Johns Comm Ctr precincts, 260 blacks and 977 whites were moved to SD 19 from majority-white SD 5, leaving 3,022 whites and 329 blacks in SD 5.

In Pleasant Hill UMC precinct, 1,455 blacks and 5,989 whites were moved to SD 19, and 443 blacks and 2,966 whites were moved to majority-black SD 18, removing all black and white population from majority-white SD 14.

In Maurice L West Comm precinct, just 14 blacks were moved into SD 19, and 126 whites were moved **out** of SD 19, in changes with majority-white SD 5 and SD 17.

In Hillview Fire Station #1 precinct, which had been located entirely

in majority-black SD 20, the drafters moved 177 blacks and 167 whites out of SD 20 to SD 19, and 425 whites and only 14 blacks were moved **out** of SD 20 to majority-white SD 17, leaving 1,585 blacks and 314 whites in SD 20.

SD 20, Jefferson County.

The drafters fell short of their super-majority target of 77.96% for SD 20 by -14.58%, thus leaving a black majority at 63.38%. A net total of 27,836 persons were added to SD 20 to bring it within $\pm 1\%$ deviation, 1,828 blacks and 22,800 whites. The drafters split 5 precincts along racial lines.

In Trussville First Bapt Ch precinct, the drafters moved all 713 blacks and 8,963 whites out of majority-white SD 15, putting 347 blacks and 327 whites in SD 20 and 8,695 whites and only 366 blacks from in majority-white SD 17.

In Mountain View Bapt Ch precinct, the drafters moved 1,849 blacks and 5,216 whites into SD 20 from majority-white SD 15, and 127 whites and only 1 black person to majority-white SD 17.

In Gardendale Civic Ctr precinct, the drafters moved 498 blacks and 914 whites to SD 20 from majority white SD 17, leaving 11,887 whites and only 635 blacks in SD 17.

In Pinson UMC precinct, the drafters moved 755 blacks into SD 20 from majority-white SD 17, and moved 1,394 whites **out** of SD 20 to SD 17.

In Fultondale First Bapt Ch precinct, the drafters moved 894 blacks and 1,259 whites to SD 20 from majority-white SD 17, leaving only 94 blacks and 1,490 whites in SD 17.

Viewed overall, it is clear that, given the fact that most of the black population of Jefferson County was already located in the majority-black Senate districts, to move enough total population to bring all three severely underpopulated SD 18, SD 19, and SD 20 within 1% deviation, the drafters had to move precinct splits that frequently contained more whites than blacks. It is clear they tried to choose those splits that would reduce the black percentages as little as possible.

SD 23, Butler, Clarke, Conecuh, Dallas, Lowndes, Marengo, Monroe, Perry, Washington, and Wilcox Counties.

The drafters reached and exceeded their target of 64.79% for SD 23 by +0.02%. A net total of 23,399 persons were added to SD 23 to bring it within $\pm 1\%$ deviation, 15,265 blacks and 7,716 whites. To do so, the drafters split the boundaries of 5 counties and 27 precincts.

The drafters split Clarke, Conecuh, Marengo, Monroe, and Washington Counties in SD 23. APX 17. The ALBC remand Senate plan demonstrates that it was not necessary to split any counties to produce a compact, 54.19% black SD 23

that is overpopulated by +1.47% deviation, simply by putting together whole Dallas, Wilcox, Clarke, Monroe, Conecuh, and Butler Counties. See Exhibits 7 and 8 to this brief.

The drafters split the following precincts in Clarke County:

In Jackson City Hall precinct, the drafters moved 1,570 blacks and 567 whites into SD 23 from majority-white SD 22.

In Overstreet Grocery precinct, the drafters moved 11 blacks and 11 whites to SD 23 from majority-white SD 22.

In Skipper Fire Station-Jackson Nat Guard-Jackson Fire Dept. precinct, the drafters moved 184 blacks and 123 whites to SD 23 from majority-white SD 22.

In Old Engineers Building precinct, the drafters moved 294 blacks and 221 whites to SD 23 from majority-white SD 22.

In Thomasville Nat Guard Armory precinct, the drafters moved 205 whites and 24 blacks **out** of SD 23 to majority-white SD 22, and 1,057 blacks and 185 whites **out** of SD 23 to majority-black SD 24, leaving 76 blacks and 5 whites in SD 23.

In Fulton City Hall precinct, the drafters moved 244 blacks and 70 whites to majority-black SD 24 and 59 blacks and 82 whites to SD 23, all out of

majority-white SD 22, leaving only 48 blacks and 841 whites in SD 22.

The drafters split the following precincts in Conecuh County:

In Belleville Bapt Ch precinct, the drafters moved 563 blacks and 145 whites to SD 23 from majority-white SD 22, leaving 0 blacks and 51 whites in SD 22.

In Castleberry Fire Dept. 1 precinct, the drafters left the split between SD 23 and majority-white SD 22 unchanged.

In Paul Fire Dept. precinct, the drafters moved 79 blacks and 58 whites to SD 23 from majority-white SD 22, leaving only 2 blacks and 120 whites in SD 22.

In Herbert FD precinct, the drafters moved 36 blacks and 60 whites to SD 23 from majority-white SD 22, leaving only 7 blacks and 129 whites in SD 22.

In Bermuda Comm House precinct, the drafters moved 200 whites and 51 blacks **out** of SD 23 to majority-white SD 22.

The drafters split one precinct in Marengo County. They moved 639 blacks and 315 whites to SD 23 from majority-black SD 24.

The drafters split the following precincts in Monroe County:

In Chrysler/Eliska/McGill precinct, the drafters moved 19 blacks and 5 whites to SD 23 from majority-white SD 22.

In Perdue Hill Masonic Lodge precinct, the drafters moved 39 blacks and 141 whites **out** of SD 23 to majority-white SD 22.

In Purdue Hill precinct, the drafters moved 7 blacks and 49 whites **out** of SD 23 to majority-white SD 22.

In Bethel Bapt House precinct, the drafters moved 0 blacks and 38 whites **out** of SD 23 to majority-white SD 22.

In Days Inn/Ollie precinct, the drafters moved 215 blacks and 490 whites **out** of SD 23 to majority-white SD 22.

In Monroeville Armory precinct, the drafters moved 293 blacks and 935 whites **out** of SD 23 to majority-white SD 22.

In Mexia Fire Station precinct, the drafters moved 99 blacks and 699 whites **out** of SD 23 to majority-white SD 22.

In Monroeville Housing Auth precinct, the drafters moved 0 blacks and 46 whites **out** of SD 23 to majority-white SD 22.

In Monroe Beulah Ch precinct, the drafters moved 19 blacks and 119 whites **out** of SD 23 to majority-white SD 22.

In Shiloh/Grimes precinct, the drafters moved 1 black and 21 whites **out** of SD 23 to majority-white SD 22.

The drafters split the following precincts in Washington County:

In Malcolm Voting House precinct, the drafters moved 18 blacks and 6 whites to SD 23 from majority-white SD 22.

In McIntosh Comm Ctr precinct, the drafters moved all 755 blacks and 30 whites to SD 23 from majority-white SD 22, leaving 0 black or whites in SD 22.

In McIntosh Voting House precinct, the drafters moved 384 blacks and 92 whites to SD 23 from majority-white SD 22, leaving 58 blacks and 400 whites in SD 22.

In Cortelyou precinct, the drafters moved 272 blacks and 127 whites to SD 23 from majority-white SD 22, leaving 85 whites and 0 blacks in SD 22.

In Carson/Preswick precinct, the drafters moved 207 blacks and 25 whites to SD 23 from majority-white SD 22.\

SD 24, Choctaw, Clarke, Greene, Hale, Marengo, Pickens, Sumter, and Tuscaloosa Counties.

The drafters reached and exceeded their target of 62.82% for SD 24 by +0.48%. A net total of 18,892 persons were added to SD 24 to bring it within $\pm 1\%$ deviation, 12,473 blacks and 5,507 whites. To do so, the drafters split the boundaries of 5 counties and 18 precincts.

The drafters split the boundaries of Choctaw, Clarke, Hale, Pickens and

Tuscaloosa Counties in SD 24. APX 17. The ALBC remand Senate plan demonstrates that it was necessary to split only one county to produce a compact, 60.42% black SD 24 that is overpopulated by +2.82% deviation, simply by putting together whole Choctaw, Marengo, Sumter, Greene, Hale, and Perry Counties, splitting only Tuscaloosa County, which must be split for population equality. The ALBC plan splits no precincts in Tuscaloosa County.

The drafters split the following precincts in Choctaw County:

In Butler-Lavaca-Mt. Sterlin precinct, the drafters moved 608 blacks and 1,646 whites to SD 24 from majority-white SD 22, leaving only 7 blacks and 141 whites in SD 22.

In Bogueloosa precinct, the drafters moved 251 blacks and 702 whites to SD 24 from majority-white SD 22, leaving only 29 blacks and 391 whites in SD 22.

In Toxey-Gilbertown-Melvin-Hurricane precinct, the drafters moved 344 blacks and 388 whites to SD 24 from majority-white SD 22, leaving only 36 blacks and 385 whites in SD 22.

In Branch-Bladon precinct, the drafters moved 326 blacks and 59 whites to SD 24 from majority-white SD 22, leaving only 10 blacks and 43 whites in SD 22.

In Silas-Souwilpalsney-Toomey precinct, the drafters moved 850 blacks and 818 whites to SD 24 from majority-white SD 22, leaving 0 blacks and 237 whites in SD 22.

In Lusk-Pleasant Valley-Ararat precinct, the drafters moved 41 blacks and 14 whites to SD 24 from majority-white SD 22, leaving 32 blacks and 755 whites in SD 22.

In Riderwood-Rock Springs precinct, the drafters moved all 5 blacks who had been in majority-white SD 22 to SD 24, even though that meant moving 136 whites into SD 24 as well, leaving 0 blacks and 43 whites in SD 22.

In Clarke County, the drafters split one precinct, Bashi Methodist Ch, moving 1,012 blacks and 1,041 whites to SD 24 from majority-white SD 22, leaving 270 blacks and 1,969 whites in SD 22.

In Hale County the drafters split the following precincts:

In Havanna-A precinct, the drafters moved 52 blacks and 70 whites to SD 24 from majority-white SD 21, and only 6 blacks and 37 whites to majority-white SD 14.

In Valley B precinct, the drafters moved 34 blacks and 23 whites to SD 24 from majority-white SD 21, and 7 blacks and 29 whites to majority-white SD 14.

In Valley C precinct, the drafters moved 14 blacks and 8 whites to SD 24 from majority-white SD 21, and 13 blacks and 44 whites to majority-white SD 14.

In Pickens County, the drafters split one precinct, Carrollton 4 Service Ctr, moving 603 blacks and 155 whites to SD 24 from majority-white SD 21.

In Tuscaloosa County, the drafters split the following precincts:

In Jayces Park precinct, the drafters moved 3,681 blacks and 1,948 whites to SD 24 from majority-white SD 21.

In Holt Armory precinct, the drafters moved 2,543 blacks and 1,895 whites to SD 24 from majority-white SD 21.

In Peterson Meth Ch precinct, the drafters moved 340 blacks and 331 whites to SD 24 from majority-white SD 21, leaving 134 blacks and 1,723 whites in SD 21.

In McFarland Mall precinct, the drafters moved 373 blacks to SD 24 from majority-white SD 21, and moved 738 whites **out** of SD 24 to SD 21.

In Hillcrest HS and Fosters-Ralph Fire Dept precincts there were no changes in the splits between SD 24 and SD 21.

SD 26, Montgomery County.

The drafters reached and exceeded their super-majority target of 72.75% for

SD 26 by +2.47% at 75.22%, next to HD 59 the largest black percentage in either the House or Senate plan. A net total of 15,785 persons were added to SD 26 to bring it within $\pm 1\%$ deviation, adding 14,806 blacks and **removing** 364 whites.

Here's what the Supreme Court said about SD 26:

In order for Senate District 26, for example, to meet the State's no-more-than-1% population-deviation objective, the State would have to add about 16,000 individuals to the district. And, prior to redistricting, 72.75% of District 26's population was black. Accordingly, Alabama's plan added 15,785 new individuals, and only 36 of those newly added individuals were white.

135 S.Ct. at 1263.

Transgressing their own redistricting guidelines, Committee Guidelines 3–4, the drafters split seven precincts between the majority-black District 26 and the majority-white District 25, with the population in those precincts clearly divided on racial lines. And the District Court conceded that race “was a factor in the drawing of District 26,” and that the legislature “preserved” “the percentage of the population that was black.” 989 F.Supp.2d, at 1306.

Id. at 1271. Here is a closer look at those precinct splits.

In 1A Cloverdale Comm Ctr precinct, the drafters moved 494 blacks into HD 26 from majority-white SD 25; but they moved 452 whites **out** of SD 26 to SD 25, even though SD 26 was severely underpopulated. As the Supreme Court found, “virtually all Senate District 26 boundaries departed from county lines...” 135 S.Ct. at 1271.

In 1B Vaughn Park Ch of Christ precinct, the drafters moved 3,322 blacks and 2,273 whites to SD 26 from majority-white SD 25, leaving 992 blacks and 2,787 whites in SD 25.

In 1C Montgomery Museum of Fine Arts precinct, the drafters moved 2,651 blacks and 941 whites to SD 26 from majority-white SD 25.

In 1D Whitfield Memorial UMC precinct, the drafters moved 3,054 blacks and 1,345 whites to SD 26 from majority-white SD 25.

In 3F Goodwyn Comm Ctr precinct, the drafters moved 437 blacks and 344 whites to SD 26 from majority-white SD 25.

In 3G Alcazar Shrine Temple precinct, the drafters moved 1,755 blacks and 336 whites to SD 26 from majority-white SD 25.

In 5M Bell Road YMCA precinct, the drafters moved 1,118 blacks and 1,172 whites **out** of SD 26 to majority-white SD 25 even though SD 26 was severely underpopulated.

SD 28, Lee, Macon, Bullock, Russell, Barbour, Henry, and Houston Counties.

The drafters reached and exceeded their 51.05% target for SD 28 by 8.91% at 59.96% black. A net total of 6,541 persons were added to SD 28 to bring it within $\pm 1\%$ deviation, by adding 15,543 blacks and **removing** 8,918 whites. To

do so, the drafters split 3 counties and 18 precincts along racial lines. The ALBC remand Senate plan demonstrates that a compact 50.24% black SD 28 can be produced with a -4.75% population deviation without splitting a single county, simply by putting together Macon, Bullock, Russell, Barbour, and Henry Counties.

The drafters split the following precincts in Houston County:

In Kinsey precinct, the drafters moved 969 blacks and 774 whites to SD 28 from majority-white SD 29, leaving only 42 blacks and 362 whites in SD 29.

In Johnson Homes precinct, the drafters moved 4,367 blacks and 278 whites to SD 28 from majority-white SD 31, leaving only 44 blacks and 165 whites in SD 29.

In Farm Ctr precinct, the drafters moved 666 blacks and 223 whites to SD 28 from majority-white SD 29 and SD 31.

In Doug Tew Comm Ctr precinct, the drafters moved 1,626 blacks and 1,385 whites to SD 28 from majority-white SD 29.

In Library precinct, the drafters moved 2,595 blacks and 551 whites to SD 28 from majority-white SD 29 and SD 31.

In Lincoln Comm Ctr precinct, the drafters moved 1,027 blacks and 202 whites to SD 28 from majority-white SD 29 and SD 31.

In Wiregrass Park precinct, the drafters moved 3,490 blacks and 1,737 whites to SD 28 from majority-white SD 29 and SD 31.

In Vaughn Blumberg Ctr precinct, the drafters moved 1,329 blacks and 1,167 whites to SD 28 from majority-white SD 29 and SD 31.

The drafters split the following precincts in Lee County:

In Waverly precinct, the drafters moved 180 blacks and 32 whites to SD 28 from majority-white SD 27.

In Loachapoka precinct, the drafters moved 1,148 whites and 249 blacks **out** of SD 28 to majority-white SD 27.

In Auburn precinct, the drafters moved 409 blacks to SD 28 from majority-white SD 27 and SD 13, and moved 11,103 whites **out** of SD 28 to SD 27 and SD 13.

In Beuaregard School precinct, the drafters moved 2,600 whites and 977 blacks **out** of SD 28 to majority-white SD 27.

In Marvyn precinct, the drafters moved 195 whites and 48 blacks **out** of SD 28 to majority-white SD 27.

The drafters split the following precincts in Russell County:

In Roy Martin Ctr precinct, the drafters moved 1,115 blacks and 1,601 whites to SD 28 from majority-white SD 27.

In Ladonia Fire Dept precinct, the drafters moved 61 blacks and 7 whites to SD 28 from majority-white SD 27.

In Seale Courthouse precinct, the drafters moved 750 whites and 152 blacks **out** of SD 28 to majority-white SD 27.

In Nat Guard Armory precinct, the drafters moved 3,452 blacks and 1,997 whites to SD 28 from majority-white SD 27.

In Austin Sumbry Park precinct, the drafters moved 279 blacks and 294 whites to SD 28 from majority-white SD 27, leaving only 48 blacks and 282 whites in SD 27.

SD 33, Mobile County.

The drafters reached and exceeded their 64.89% target for SD 33 by 6.82% at 71.71% black. A net total of 24,299 persons were added to SD 33 to bring it within $\pm 1\%$ deviation, adding 25,015 blacks and **removing** 1,304 whites. To do so, the drafters split the boundaries of Mobile County in two places between SD 22 and SD 34, and split 5 precincts along racial lines.

The ALBC remand Senate plan demonstrates that the drafters could have drawn three compact Senate districts, majority-black SD 33 with -0.09% population deviation and majority white SD 34 and SD 35 at +1.93% and +0.58% deviation, while keeping Mobile County whole and splitting no precincts. SD 33

would have been 62.83% black.

Here are the precinct splits in SD33:

In Satsuma City Hall precinct, the drafters moved 3,536 whites and 571 blacks **out** of SD 33 to majority-white SD 34.

In Chickasaw Auditorium precinct, the drafters moved 1,906 whites and 455 blacks **out** of SD 33 to majority-white SD 34.

In Morningside Elem precinct, the drafters moved 3,657 blacks and 922 whites into SD 33 from majority-white SD 35, leaving only 92 blacks and 340 whites in SD 35.

In Riverside Ch of the Nazarene precinct, the drafters moved 709 blacks and 503 whites into SD 33 from majority-white SD 35, leaving only 38 blacks and 425 whites in SD 35.

In St. Andrews Episcopal Ch precinct, the drafters moved 1,496 blacks and 1,438 whites into SD 33 from majority-white SD 35, leaving only 22 blacks and 378 whites in SD 35.

G. *Conclusion of Shaw Analyses.*

Investigation of a *Shaw* violation requires looking primarily at the margins of challenged districts for evidence that the drafters “place[d] a significant number of voters within or without *a particular district.*” 135 S.Ct. at 1265 (quoting

Miller v. Johnson, 515 U.S. 900, 916 (1995) (emphasis added by the Supreme Court). When county and precinct boundaries are split along clear racial lines, as shown above, the subordination of traditional districting principles to race is obvious. This is especially true when a district is not compact or contiguous or when the core of an old district is not preserved or when an avoidable incumbent conflict is created.

All 28 majority-black House districts and all 8 majority-black Senate districts display unmistakable evidence of racial sorting. That is not surprising when the drafters openly and proudly admitted that they were aiming to reach or exceed racial targets created for each district based solely on census data within a narrow $\pm 1\%$ deviation constraint. The Supreme Court has held that Section 5 of the Voting Rights Act does not provide a narrowly tailored, compelling interest that justifies this racial targeting. Consequently, all the majority-black districts created by Acts 2012-602 and 2012-603 are unconstitutional.

III. THE UNNECESSARY SPLITTING OF COUNTY BOUNDARIES VIOLATES THE ONE-PERSON, ONE-VOTE RIGHTS OF COUNTY RESIDENTS AND IS RACIALLY DISCRIMINATORY.

In its August 2, 2013, opinion and judgment, this Court held, with Judge Thompson dissenting, that it lacked subject matter jurisdiction of the ALBC plaintiffs' one-person, one-vote claims on behalf of county residents until the

Legislature elected in November 2014 had held its organizational session in January 2015. *Alabama Legislative Black Caucus v. Alabama*, 988 F.Supp.2d 1285 (M.D. Ala.) (three-judge court), appeal dismissed for want of jurisdiction, 134 S.Ct. 694 (2013), vacated and remanded, 988 S.Ct. 1285 (2015). Before then, this Court said, the constitutional claim based on unnecessary splitting of county boundaries was not ripe and, for that reason, plaintiffs lacked Article III standing. 988 F.Supp.2d at 1297.

On February 23, 2015, the Supreme Court granted the ALBC plaintiffs' motion for leave to file a post-argument supplemental brief addressing their county boundary claims, a copy of which is attached to this brief as Exhibit 9. On March 9, 2015, the Supreme Court granted the State appellees' motion for leave to file their response to the ALBC supplemental brief, a copy of which is attached to this brief as Exhibit 10. On March 25, 2015, the Supreme Court vacated this Court's final judgment and said:

We note that appellants have also raised additional questions in their jurisdictional statements, relating to their one-person, one-vote claims (Caucus) and vote dilution claims (Conference), which were also rejected by the District Court. We do not pass upon these claims. The District Court remains free to reconsider the claims should it find reconsideration appropriate. And the parties are free to raise them, including as modified by the District Court, on any further appeal.

135 S.Ct. at 1274.

The State appellees concluded their supplemental brief by urging the Supreme Court to affirm this Court's ruling against the one-person, one-vote claims on behalf of county residents. State Supp. Br. 4. But, the State concluded, "[i]f it reverses on the racial gerrymandering claim, then there is no reason for the Court to address the county-splitting claim at all." *Id.* The Supreme Court has vacated and remanded the racial gerrymandering claim for reconsideration in light of constitutional standards that doom all the majority-black House and Senate districts. As this brief has shown, the crucial role county boundaries play in the *Shaw* analyses of the majority-black districts should, indeed, make reconsideration of the one-person, one-vote claim unnecessary. Its pendency on remand should reinforce this Court's *Shaw* focus on county boundaries. In particular, this Court should require the State to demonstrate how clinging to a strict $\pm 1\%$ population deviation constraint can serve a narrowly tailored, compelling state interest when it necessarily doubles the number of counties whose boundaries must be split, subordinating the most important traditional principle in Alabama.

In their supplemental Supreme Court brief, the ALBC pointed out that the questions of ripeness and standing had been resolved by the January 2015 organizational session, in which "the Legislature adopted again the Rules and Standing Committees that undergird and enshrine the local delegation system."

ALBC Supp. Br. 6. Addressing the merits, the ALBC pointed out that “[t]hroughout the proceedings below, appellants contended that respecting country [sic: county] boundaries—the most important traditional districting principle in Alabama—is central to assuring one-person, one-vote and to constraining racial discrimination.” *Id.* at 3 (footnote omitted).

This Court addressed in the alternative the merits of plaintiffs’ one-person, one-vote claims in its August 2, 2013, opinion, concluding that it was bound by Eleventh Circuit precedent in *DeJulio v. Georgia*, 290 F.3d 1291 (11th Cir.2002), to reject those claims. 988 F.Supp.2d at 1306 et seq. Even if it were not bound by *DeJulio*, this Court concluded, the one-person, one-vote claim on behalf of all county residents must fail, because “local delegations do not perform the kind of governmental functions identified by the Supreme Court as necessary to subject a local governmental official to the requirement of one person, one vote.” *Id.* at 1309. Again, Judge Thompson dissented on the merits.

On remand, if it is not rendered moot by reconsideration of the racial gerrymandering claims, this Court should give the parties an opportunity to submit additional briefs and evidence on the county boundaries issue. In their supplemental Supreme Court brief, the ALBC plaintiffs gave the following example of how the unnecessary crossing of county boundaries among districts

violates the Equal Protection Clause, both by diluting the votes of county residents when local bills affecting only their county are being considered, and by opening the door for racial discrimination by legislators who represent majority-white electorates in other counties:

Jefferson County has a population of 658,466, a little less than the number needed for five Senate districts. Under the 2012 plan there are three Senate districts wholly within Jefferson County. The remaining 252,779 county residents, however, although in number only about the size of two additional districts, are divided among five other Senate districts; a large majority of the voters in each of those five districts actually live outside Jefferson County. All five of the Senators from those trans-county districts sit on the Jefferson County delegation. Thus the 405,687 residents of the three Jefferson-County-only Senate districts, although constituting 61% of the county population, elect only 37.5% (3/8) of the eight member Senate Jefferson County delegation that (together with the House Jefferson County delegation) effectively controls the local laws for Jefferson County.

ALBC Supp. Br 2-3. A bill that just passed the Senate and is pending action in the House provides a perfect example of why this Court should reconsider its earlier decision and rule that the indiscriminate splitting of county boundaries in Acts 2012-602 and 2012-603 are unconstitutional. See Exhibit 11 to this brief.

That bill, SB89, if enacted, would hand over to officials elected by voters in other municipalities and other counties the power to appoint members to the Birmingham Water Works Board. This is a local bill masquerading as a general

bill, and its sponsors include all five white members of the Jefferson County Senate delegation, every one of whom has a majority of constituents outside Jefferson County. The bill is opposed by the only three Senators whose districts lie entirely inside Jefferson County, all of whom are elected by black majorities.

The City of Birmingham created its water works board in 1951 under the general law governing municipal water works boards throughout Alabama, and it gives the Birmingham City Council sole authority to appoint the members of its board. Ala Code § 11-50-230 et seq. Today Birmingham has a majority-black electorate and City Council. If all Jefferson County Senate districts were located entirely within Jefferson County, as the ALBC remand Senate plan provides, the Jefferson County delegation would have to be responsive solely to Jefferson County voters, and it is unlikely a bill like SB89 would even be suggested, much less allowed to pass the Senate over the opposition of the only Senators whose districts lie entirely within Jefferson County.

At the very least, the Supreme Court's decision to remand the one-person, one-vote issue for reconsideration, instead of affirming summarily this Court's August 2, 2013, ruling, suggests that this Court is not bound by the Eleventh Circuit's decision in *DeJulio* and should give more serious consideration to the constitutional analysis in Judge Thompson's dissent. In particular, it should

revisit its conclusion that local legislative delegations are not engaged in governmental functions. Lawmaking is the quintessential governmental function. And even though county delegations exercise their gatekeeping and approval powers over local laws as a matter of informal custom, as opposed to formal law, in reality, they are, as Judge Thompson said, “the single most important legislating bodies for [the] counties.” 988 F.Supp.2d at 1316 (Thompson, J., dissenting).

It is, of course, true that statewide population equality necessarily conflicts with county residents’ one-person, one-vote rights. As Professor James Gardner points out, there is an inherent tension between representation by territorial districts and providing each person an equally weighted vote when electing members of a state legislature. The former principle presupposes that the bonds of local community have priority, the latter that statewide bonds and interests are preeminent. Territorial districts are intended to make legislators responsive to the local interests of the communities they represent. Statewide population equality, on the other hand, tends to favor partisan allegiances in the legislature.²⁰ Where there are conflicting goals of fair representation, “it seems overly fussy to demand

²⁰ James A. Gardner, *What Is “Fair” Partisan Representation, and How Can It Be Constitutionalized? The Case For a Return To Fixed Election Districts*, 90 MARQ. L. REV. 555, 573-80 (2006)

that no compromise impugn any design assumption.”²¹

There is no escaping the centrality of county integrity to fair and final resolution of all the issues in this extended litigation. Early on, this Court held that *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89 (1984), deprived it of subject matter jurisdiction, somehow overruling earlier federal court decisions enforcing the whole-county provisions of the Alabama Constitution to the extent practicable. Without revisiting that conclusion, it is clear that the Supreme Court’s emphasis on attention to traditional districting principles to avoid unconstitutional racial gerrymandering requires this Court to restore the preeminence of county boundaries on **federal** grounds. No one can dispute that those state constitutional provisions are the most important traditional districting principles in Alabama history. The real political impact on every Alabama citizen, and especially on the racial minority, of county legislative delegations operating through informal local courtesy adds yet another compelling reason to require the Legislature to respect the integrity of county boundaries. In short, this Court cannot avoid confronting the serious damage done to constitutional voting rights by indiscriminately splitting counties among House and Senate districts, whether it is reconsidering the *Shaw* claims or the one-person, one-vote claims.

²¹ *Id.* at 588.

IV. CONCLUSION.

The ALBC plaintiffs' motion for summary judgment to comply with the Supreme Court's mandate should be granted. All 36 of the majority-black House and Senate districts in Acts 2012-602 and 2012-603 should be declared unconstitutional in violation of the Equal Protection standards of *Shaw v. Reno*, and the State should be enjoined from enforcing these plans in future elections.

In the alternative, the redistricting plans in Acts 2012-602 and 2012-603 should be declared unconstitutional in violation of the one-person, one-vote rights of county residents, under the Equal Protection standards of *Reynolds v. Sims*.

This Court should retain jurisdiction of this action, and the Legislature should be given an opportunity to draw new House and Senate redistricting plans with 2010 census data that comply with all state and federal constitutional and statutory standards. The new, constitutional plans should be implemented no later than the March 2016 statewide primary elections and November 2016 general election. Under Ala Code § 17-13-5, the qualifying deadline for the March 2016 primary is November 13, 2015. To allow the Court sufficient time to review the plans proposed by the parties or to review the plans enacted by the Legislature, the Court should require the Legislature to adopt a plan and submit it to this Court no later than August 1, 2015.

If the Legislature is unable to draw constitutional House and Senate plans in time for use in the March 2016 primary elections, the parties should be given an opportunity to propose new plans, and this Court should adopt its own redistricting House and Senate plans for use in the 2016 elections.

Plaintiffs should be awarded their reasonable attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988 and 52 U.S.C. § 10310(e).

Respectfully submitted this 27th day of April, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2015, I served the foregoing on the following electronically by means of the Court's CM/ECF system:

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