

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; JOHN H. *
MERRILL 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' OBJECTIONS TO
ENACTED REMEDIAL HOUSE AND SENATE PLANS**

Plaintiffs Alabama Legislative Black Caucus et al., through undersigned

counsel, pursuant to this Court's order entered February 10, 2017, Doc. 327, submit the following objections to the remedial Senate redistricting plan, Act 2017-347 (SB403), and the remedial House redistricting plan, Act 2017-348 (HB571), which are described in the State defendants' submission, Doc. 335 et seq.

The ALBC plaintiffs do not object to any of the majority-black House and Senate districts, including HD 85, which has a 42.18% BVAP plurality. Plaintiffs object only to the Legislature's refusal to remove at least one of the two Jefferson County House districts represented by incumbents who do not reside in Jefferson County, HD 14 and HD 16, and to the Legislature's refusal to remove from Jefferson County SD 5, which also is represented by an incumbent who does not reside in Jefferson County. Plaintiffs contend that HD 14, HD 16, and SD 5 are racially gerrymandered and intentionally discriminatory.

The Remedial Standard.

1. In its order entered January 20, 2017, Doc. 318, this Court ordered the parties to confer on how to proceed in the remedy phase of this action and said, "It is this court's expectation that the state legislature will adopt a remedy in a timely and effective manner, correcting the constitutional deficiencies in its plans in sufficient time for conducting the 2018 primary and general elections, without the need for court intervention." Doc. 318 at 2-3.

2. Twelve days later, on February 1, 2017, counsel for the ALBC plaintiffs met with counsel for the State and the Reapportionment Committee and urged defendants to comply with the remedial standards set out in *Abrams v. Johnson*, 521 U.S. 74, 85-86 (1997), which held:

a. Where a statewide redistricting plan has “subordinated traditional districting principles to racial considerations” in some districts, the rest of the plan is not entitled to deference. *Id.* at 85. And where “the constitutional violation affects a large geographic area of the State ... any remedy of necessity must affect almost every district.” *Id.* at 86.

b. In these circumstances, a remedial redistricting plan should “make[] substantial changes to the existing plan consistent with [Alabama’s] traditional districting principles, and considering race as a factor but not allowing it to predominate.” *Id.* at 86.

3. At this February 1 meeting defendants’ counsel disagreed that the *Abrams* standard applied to the instant case. Instead they previewed plans Mr. Hinaman had already drawn with instructions to correct the specific county and precinct splits identified by this Court’s majority opinion while minimizing changes to other districts subject to the “ripple” effect.

4. At the Reapportionment Committee meeting on March 1, 2017, counsel

for the Committee reiterated his opinion that changes to the unconstitutional districts identified by this Court and to surrounding districts should be minimized. State Remedy Exh. 53, Doc. 343-2, at 2-3, 8. ALBC counsel disagreed and urged the legislative majority to follow the *Abrams* standard and to negotiate with ALBC members substantial changes adhering to traditional districting principles. *Id.* at 4. At the request of Committee counsel, ALBC counsel deferred discussion of *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S.Ct. 788 (2017), which had been decided the morning of the March 1 meeting. Doc. 343-2 at 11-12.

5. In the Reapportionment Committee meeting on April 26, 2017, State Remedy Exh. 54, Doc. 339-2, counsel for the Committee, citing *Bethune-Hill*, advised members to begin drawing remedial districts by following traditional districting principles before considering compliance with the Voting Rights Act. *Id.* at 3. But Committee counsel also recommended, and the Committee adopted, revised Guidelines that demoted the importance of preserving county boundaries. State Remedy Exh. 51, Doc. 339-1. Minimizing the number of counties in each district became only one of many criteria over which “the Legislature shall at its discretion determine which takes priority.” *Id.* at ¶ IV.4.d and e. ALBC counsel (identified in the transcript as a male speaker) contended that the Legislature does not have discretion to ignore the whole county provisions of the Alabama

Constitution, and noted that the Committee was revising Guidelines which were the basis for the constitutional violations found by this Court and were attached as an appendix to the majority opinion. Doc. 339-2 at 9. See *Alabama Legislative Black Caucus v. Alabama*, --- F.Supp.3d ----, 2017 WL 378672 (M.D. Ala., Jan. 20, 2017) (three-judge court) at *5 (“The guidelines required the districts ... to be composed of as few counties as practicable....”).

6. Notwithstanding the demotion of county boundaries in the revised Guidelines, according to the co-chairs of the Reapportionment Committee, Senator Gerald Dial and Representative Randy Davis, the drafters gave priority to “putting precincts back together” and “reducing the number of county cross district lines....” State Remedy Exh. 58, Doc. 339-6 at 8-9 (quoting Rep. Davis); accord, State Remedy Exh. 57, Doc. 339-5 at 3, 14-15 (Sen. Dial); State submission, Doc. 335 ¶ 5.a. Moreover, because of *Bethune-Hill*, they decided “that all of the black districts need to be redrawn....” Doc. 339-6 at 9; accord, Doc. 335 ¶ 5.b.

The Majority-Black Districts Are Not Objectionable.

7. To comply with the *Abrams* remedial standard, ALBC counsel asked William Cooper to draw House and Senate plans that, within the constraints of $\pm 1\%$ population deviation and avoiding incumbent conflicts, attempted to restore county and precinct boundaries in the majority-black districts and in all other

districts included in the ripple effects, that is, districts that had to be changed even in minor respects in order to restore 1% deviation. After consulting several ALBC members about their districts, Mr. Cooper presented the “ALBC whole county” plans, which were introduced on March 16, 2017, as HB424 and SB334.¹

8. The ALBC Whole County Plans were the first plans to be published for consideration by legislators. ALBC members urged the Reapportionment Committee co-chairs and other members of the Legislature to negotiate changes that would produce compromise House and Senate plans that, once enacted, the ALBC plaintiffs would support and not object to in this Court.

9. The ALBC Whole County House plan, HB424, ALBC Remedy Exhs. 1-9, split 38 counties, leaving 29 counties whole, and split only 169 precincts. ALBC Remedy Exh. 3. The ALBC Whole County Senate plan, SB334, ALBC Remedy Exhs. 10-18, split only 26 counties, leaving 41 counties whole, and split only 46 precincts. ALBC Remedy Exh. 12. Population deviations were less than 1%, and there were no incumbent conflicts in either plan.

10. Neither HB424 nor SB334 was reported out of committee. See ALBC Remedy Exhs. 19 and 20. But the co-chairs of the Reapportionment Committee

¹ Undersigned counsel emailed to the Reapportionment Office the block equivalency files received from Mr. Cooper for each ALBC proposed plan and modification. Each proposal was placed in the Reapportionment Office computer and was available publicly for examination.

informed ALBC members that the House and Senate plans approved by the Committee had attempted to replicate as much of the majority-black districts in the ALBC Whole County Plans as they could. See State Remedy Exh. 57, Doc. 339-5 at 15, 19.

11. In hopes of reaching a compromise, the ALBC members agreed to negotiate from the Reapportionment Committee's plans, not from the ALBC Whole County Plans. Most ALBC members met with Mr. Hinaman to discuss their own districts, and they were satisfied – if not entirely happy – with the majority-black districts finally enacted. Consequently, in the spirit of legislative compromise, the ALBC plaintiffs have no objection to the majority-black districts in Acts 2017-347 and 348. See ALBC Remedy Exhs. 21-37.

12. But, in disregard of the *Abrams* remedial standards, and notwithstanding the trial testimony of the drafters of the 2012 plans that their efforts to reach racial targets in all 35 majority-black districts created ripple effects throughout the state, see ALBC proposed findings, Doc. 194 at 8-9, the drafters of the Legislature's 2017 remedial plans tried to hold down the ripple effects of redrawing the majority-black districts, State Remedy Exh. 58, Doc. 339-6 at 12, which restricted the reach of race-neutral traditional districting principles. They insisted that “[c]hanges could be made only to majority-black districts and districts adjoining or

near them as necessary to correct population deviations....” State submission, Doc. 335 ¶ 7.b.

13. Even under these restraints on ripple effects, the enacted 2017 remedial House and Senate plans make substantial changes in the 2012 plans.

a. The SB403, Act 2017-347, Senate plan splits 26 counties and 62 precincts, compared with 33 counties and 161 precincts split in the Act 2012-603 Senate plan.

Senate Comparison	2017 plan	2012 plan	ALBC Whole County plan
Split Counties	26	33	26
Split precincts	62	161	46

b. The HB571, Act 2017-348, House plan splits 46 counties and 220 precincts, compared with 50 counties and 415 precincts split in the Act 2012-602 House plan.

House Comparison	2017 plan	2012 plan	ALBC Whole County plan
Split Counties	46	50	38
Split precincts	220	415	169

c. In the SB403, Act 2017-347, Senate plan, 29 of the 35 districts changed, the black percentage decreased in seven of the eight majority-black

districts, and 27,199 black persons were shifted to majority-white districts.

Population Summary Report

Alabama State Senate -- SB403 Plan Compared to Act 603

Red fonts indicate districts that changed compared to Act 603 (29 changed)

SB403

Act 603

SB403				Act 603				Difference % Black SB403' vs. Act 603
District	Population	Black	% Black	District	Population	Black	% Black	
1	136648	15007	10.98%	1	136648	15007	10.98%	0.00%
2	137922	33654	24.40%	2	137922	33654	24.40%	0.00%
3	137642	18828	13.68%	3	137642	18828	13.68%	0.00%
4	135214	2348	1.74%	4	135214	2348	1.74%	0.00%
5	135306	8615	6.37%	5	135415	8678	6.41%	-0.04%
6	136009	20449	15.04%	6	136009	20449	15.04%	0.00%
7	137911	37708	27.34%	7	137911	37708	27.34%	0.00%
8	137377	4494	3.27%	8	137920	4528	3.28%	-0.01%
9	136370	2098	1.54%	9	137921	2102	1.52%	0.02%
10	137758	17109	12.42%	10	137323	16854	12.27%	0.15%
11	136114	20361	14.96%	11	135933	20345	14.97%	-0.01%
12	135688	27685	20.40%	12	135258	27190	20.10%	0.30%
13	136496	29008	21.25%	13	137883	28456	20.64%	0.61%
14	135527	18293	13.50%	14	136210	19173	14.08%	-0.58%
15	137642	19882	14.44%	15	137049	19848	14.48%	-0.04%
16	135242	16958	12.54%	16	137160	16223	11.83%	0.71%
17	135222	7606	5.62%	17	135227	7246	5.36%	0.26%
18	135216	77518	57.33%	18	135258	79939	59.10%	-1.77%
19	135469	87972	64.94%	19	135218	88314	65.31%	-0.37%
20	135462	85845	63.37%	20	135211	85382	63.15%	0.22%
21	135789	21902	16.13%	21	135621	21015	15.50%	0.63%
22	135663	35437	26.12%	22	136055	28932	21.26%	4.86%
23	135760	83165	61.26%	23	136391	88323	64.76%	-3.50%
24	137482	83448	60.70%	24	137724	87072	63.22%	-2.52%
25	137148	39047	28.47%	25	135542	30881	22.78%	5.69%
26	135449	94471	69.75%	26	136451	102520	75.13%	-5.38%
27	137697	34489	25.05%	27	137905	29523	21.41%	3.64%
28	137897	74291	53.87%	28	137909	82511	59.83%	-5.96%
29	137813	23597	17.12%	29	137921	20703	15.01%	2.11%
30	136870	29557	21.59%	30	135337	29405	21.73%	-0.14%
31	137518	26877	19.54%	31	137917	26751	19.40%	0.14%

32	135423	10600	7.83%	32	137918	10815	7.84%	-0.01%
33	137547	97739	71.06%	33	136214	97587	71.64%	-0.58%
34	137533	18987	13.81%	34	135267	17163	12.69%	1.12%
35	137912	26266	19.05%	35	135232	25838	19.11%	-0.06%

d. In the HB571, Act 2017-348 House plan, 71 of the 105 districts changed, the black percentage decreased in 21 of the 28 majority-black districts, and 28,384 black persons were shifted to majority-white districts.

Population Summary Report

Alabama State House -- HB571 Plan Compared to Act 602

Red fonts indicate districts that changed compared to Act 602 (71 changed)

HB571				Act 602				Difference % Black HB571 vs. Act 602
District	Population	Black	% Black	District	Population	Black	% Black	
1	45968	6849	14.90%	1	45968	6849	14.90%	0.00%
2	45486	1806	3.97%	2	45486	1806	3.97%	0.00%
3	45972	10913	23.74%	3	45972	10913	23.74%	0.00%
4	45083	5748	12.75%	4	45083	5748	12.75%	0.00%
5	45403	5637	12.42%	5	45403	5637	12.42%	0.00%
6	45375	8580	18.91%	6	45796	7594	16.58%	2.33%
7	45089	1738	3.85%	7	45089	1738	3.85%	0.00%
8	45083	9015	20.00%	8	45083	9015	20.00%	0.00%
9	45083	850	1.89%	9	45083	850	1.89%	0.00%
10	45188	7801	17.26%	10	45110	7301	16.18%	1.08%
11	45282	262	0.58%	11	45282	262	0.58%	0.00%
12	45070	661	1.47%	12	45070	661	1.47%	0.00%
13	45070	2826	6.27%	13	45070	2826	6.27%	0.00%
14	45073	1189	2.64%	14	45073	1189	2.64%	0.00%
15	45079	5850	12.98%	15	45893	6322	13.78%	-0.80%
16	45092	5079	11.26%	16	45080	4681	10.38%	0.88%
17	45082	1884	4.18%	17	45082	1884	4.18%	0.00%
18	45585	2453	5.38%	18	45585	2453	5.38%	0.00%
19	45095	26401	58.55%	19	45081	27614	61.25%	-2.70%
20	45808	1758	3.84%	20	45808	1758	3.84%	0.00%
21	45446	4262	9.38%	21	45614	3880	8.51%	0.87%
22	45873	2634	5.74%	22	45872	2634	5.74%	0.00%
23	45972	1749	3.80%	23	45972	1749	3.80%	0.00%

24	45972	688	1.50%	24	45972	688	1.50%	0.00%
25	45338	7348	16.21%	25	45709	7310	15.99%	0.22%
26	45721	708	1.55%	26	45721	708	1.55%	0.00%
27	45827	693	1.51%	27	45827	693	1.51%	0.00%
28	45887	13468	29.35%	28	45887	13468	29.35%	0.00%
29	45910	1609	3.50%	29	45910	1609	3.50%	0.00%
30	45216	1978	4.37%	30	45216	1978	4.37%	0.00%
31	45960	8033	17.48%	31	45842	7265	15.85%	1.63%
32	45711	24165	52.86%	32	45504	27326	60.05%	-7.19%
33	45723	12184	26.65%	33	45905	9741	21.22%	5.43%
34	45386	784	1.73%	34	45386	784	1.73%	0.00%
35	45961	7099	15.45%	35	45957	7388	16.08%	-0.63%
36	45969	6499	14.14%	36	45957	5604	12.19%	1.95%
37	45975	12592	27.39%	37	45966	13472	29.31%	-1.92%

HB571

Act 602

District	Population	Black	% Black	District	Population	Black	% Black	Difference % Black HB571 vs. Act 602
38	45954	9550	20.78%	38	45968	8243	17.93%	2.85%
39	45968	2403	5.23%	39	45968	2403	5.23%	0.00%
40	45812	6130	13.38%	40	45932	6084	13.25%	0.13%
41	45092	5397	11.97%	41	45092	5397	11.97%	0.00%
42	45971	5785	12.58%	42	45966	5043	10.97%	1.61%
43	45097	3003	6.66%	43	45209	3004	6.64%	0.02%
44	45095	5994	13.29%	44	45088	5174	11.48%	1.81%
45	45109	7342	16.28%	45	45087	6845	15.18%	1.10%
46	45188	3567	7.89%	46	45316	3414	7.53%	0.36%
47	45578	9175	20.13%	47	45578	9175	20.13%	0.00%
48	45784	2583	5.64%	48	45592	2575	5.65%	-0.01%
49	45155	5963	13.21%	49	45877	5928	12.92%	0.29%
50	45961	3866	8.41%	50	45961	3866	8.41%	0.00%
51	45090	2789	6.19%	51	45073	2651	5.88%	0.31%
52	45082	27872	61.83%	52	45083	27109	60.13%	1.70%
53	45973	24491	53.27%	53	45106	25184	55.83%	-2.56%
54	45090	27475	60.93%	54	45070	25612	56.83%	4.10%
55	45274	34565	76.35%	55	45071	33150	73.55%	2.80%
56	45077	28927	64.17%	56	45071	28008	62.14%	2.03%
57	45070	27051	60.02%	57	45071	30859	68.47%	-8.45%
58	45236	29710	65.68%	58	45088	32806	72.76%	-7.08%
59	45212	34790	76.95%	59	45218	34691	76.72%	0.23%
60	45490	30845	67.81%	60	45084	30514	67.68%	0.13%
61	45706	11414	24.97%	61	45078	8515	18.89%	6.08%
62	45589	8435	18.50%	62	45840	7105	15.50%	3.00%

63	45788	6307	13.77%	63	45251	6070	13.41%	0.36%
64	45777	7195	15.72%	64	45972	6537	14.22%	1.50%
65	45379	15919	35.08%	65	45073	10808	23.98%	11.10%
66	45971	11568	25.16%	66	45971	11568	25.16%	0.00%
67	45076	30978	68.72%	67	45078	31172	69.15%	-0.43%
68	45205	24203	53.54%	68	45069	29097	64.56%	-11.02%
69	45958	29308	63.77%	69	45477	29201	64.21%	-0.44%
70	45842	26224	57.21%	70	45970	28515	62.03%	-4.82%
71	45083	27260	60.47%	71	45348	30337	66.90%	-6.43%
72	45073	28979	64.29%	72	45346	29293	64.60%	-0.31%
73	45824	4694	10.24%	73	45936	4701	10.23%	0.01%
74	45639	11808	25.87%	74	45646	11192	24.52%	1.35%
75	45974	11323	24.63%	75	45946	12143	26.43%	-1.80%
76	45927	36363	79.18%	76	45972	33925	73.79%	5.39%
77	45870	28002	61.05%	77	45954	30808	67.04%	-5.99%

HB571

Act 602

District	Population	Black	% Black	District	Population	Black	% Black	Difference % Black HB571 vs. Act 602
78	45843	30762	67.10%	78	45957	32167	69.99%	-2.89%
79	45971	6962	15.14%	79	45972	5343	11.62%	3.52%
80	45965	9005	19.59%	80	45964	7899	17.19%	2.40%
81	45975	10217	22.22%	81	45932	9123	19.86%	2.36%
82	45929	25933	56.46%	82	45858	28496	62.14%	-5.68%
83	45971	24855	54.07%	83	45973	26445	57.52%	-3.45%
84	45941	24039	52.33%	84	45969	24066	52.35%	-0.02%
85	45959	20481	44.56%	85	45229	22651	50.08%	-5.52%
86	45826	8445	18.43%	86	45965	6185	13.46%	4.97%
87	45961	4071	8.86%	87	45961	4071	8.86%	0.00%
88	45971	8811	19.17%	88	45966	8380	18.23%	0.94%
89	45678	14619	32.00%	89	45678	14619	32.00%	0.00%
90	45795	16282	35.55%	90	45812	15873	34.65%	0.90%
91	45070	7088	15.73%	91	45070	7088	15.73%	0.00%
92	45101	5701	12.64%	92	45101	5701	12.64%	0.00%
93	45365	7774	17.14%	93	45956	7864	17.11%	0.03%
94	45965	3773	8.21%	94	45965	3773	8.21%	0.00%
95	45971	2271	4.94%	95	45971	2271	4.94%	0.00%
96	45400	5097	11.23%	96	45970	4703	10.23%	1.00%
97	45210	26991	59.70%	97	45071	27339	60.66%	-0.96%
98	45080	26115	57.93%	98	45069	27049	60.02%	-2.09%
99	45106	28615	63.44%	99	45069	29572	65.61%	-2.17%

100	45090	7117	15.78%	100	45069	6750	14.98%	0.80%
101	45108	8064	17.88%	101	45089	7674	17.02%	0.86%
102	45360	4560	10.05%	102	45071	3562	7.90%	2.15%
103	45112	28548	63.28%	103	45075	29326	65.06%	-1.78%
104	45082	6756	14.99%	104	45072	7117	15.79%	-0.80%
105	45079	5313	11.79%	105	45072	4084	9.06%	2.73%

The Jefferson County Racial Gerrymanders.

14. There is no non-racial excuse for the Legislature's refusal to reduce the number of majority-white House and Senate districts extending outside Jefferson County into surrounding counties, when eight majority-black House districts and three majority-black Senate districts are contained wholly within Jefferson County.

15. In the March 16 ALBC Whole County House Plan, HB424, there were only 16 House districts in Jefferson County, 8 majority-white and 8 majority-black. Only two majority-white districts, HD 45 and HD 49, extended outside Jefferson County, but their incumbents reside in Jefferson County. ALBC Remedy Exhs 1-3, 7.

16. In the March 16 ALBC Whole County Senate Plan, SB334, there were only 6 Senate districts in Jefferson County, 3 majority-white and 3 majority-black. Two majority-white districts extended outside Jefferson County, SD 15 and SD 17, but their incumbents reside in Jefferson County. ALBC Remedy Exhs. 10-12, 16.

17. When the Reapportionment Committee co-chairs released their first House and Senate plans on April 4 and 5, 2017, they reduced the number of House

districts in Jefferson County from 18 to 17, of which 9 were majority-white and 8 majority-black, and the number of Senate districts in Jefferson County from 8 to 7, of which 4 were majority-white and 3 majority-black. See ALBC Remedy Exhs. 38-45.

a. HD 43 (represented by Shelby County resident Arnold Mooney), which had only 224 persons in Jefferson County in the 2012 plan, State Trial Exh. 404, had been removed, and SD 14 (represented by Shelby County resident Cam Ward), which had only 11,123 persons in Jefferson County in the 2012 plan, State Trial Exh. 401, had been removed. ALBC Remedy Exhs. 38, 40, 41, 42, 44, 45.

b. HD 14 (represented by Winston County resident Tim Wadsworth) was left with only 5,338 persons (11.8% of district population) in Jefferson County, and HD 16 (represented by Fayette County resident Kyle South) was left with only 12,716 persons (28.2% of district population) in Jefferson County. ALBC Remedy Exh. 40.

c. SD 5 (represented by Walker County resident Greg Reed) was left with only 18,107 persons (13.4% of district population) in Jefferson County. ALBC Remedy Exh. 44.

18. On April 18, 2017, the ALBC submitted proposed modifications of the Reapportionment Committee April 5 House and Senate plans. ALBC Remedy Exhs. 46-53.

a. The ALBC April 18 House modification proposal took both nonresident incumbents' districts, HD 14 and HD 16, out of Jefferson County, leaving 7 majority-white and 8 majority-black districts in Jefferson County. ALBC Remedy Exhs. 46-49. Three majority-white districts, HD 15, HD 45, and HD 48, still extended outside Jefferson County, but their incumbents reside in Jefferson County. *Id.*

b. The ALBC April 18 Senate modification proposal took SD 5 out of Jefferson County, leaving 3 majority-white and 3 majority-black districts in Jefferson County. ALBC Remedy Exhs. 50-53. All three of the majority-white Senate districts extended outside Jefferson County, but their incumbents reside in Jefferson County. *Id.*

19. On April 26, 2017, the Reapportionment Committee leadership released revised House and Senate plans and introduced them as HB571 and SB403. ALBC Remedy Exhs. 54-59, 65, 69. But they kept HD 14, HD 16, and SD 5 unmodified in Jefferson County, leaving 9 majority-white and 8 majority-black House districts and 4 majority-white and 3 majority-black Senate districts in Jefferson County. *Id.* The co-chairs of the Committee announced that they would still consider further modifications of the plans.

20. On May 2, 2017, the ALBC counter-proposed modifications of the April 26 Reapportionment Committee House plan. ALBC Remedy Exhs. 60-64. The

May 2 ALBC House plan removed HD 14 and HD 16 from Jefferson County, but replaced them by moving HD 13 into Jefferson County, which left 8 majority-white and 8 majority-black districts in Jefferson County. HD 13 is represented by Connie Rowe, whose residence in Jasper, Walker County, is more proximate to Jefferson County than are the residences of the incumbents in HD 14 and HD 16. See ALBC Remedy Exh. 64.

21. On May 4, 2017, the Reapportionment Committee co-chairs offered their May 4 House and Senate plans as substitutes for HB571 and SB403. ALBC Remedy Exhs. 21-37. They made no changes to the Jefferson County districts.

22. When on May 4 the substitute SB403 Senate plan came up for a vote in the Senate, Sen. Smitherman offered as a substitute the ALBC April 18 Senate modification plan, ALBC Remedy Exhs. 50-53, but it was defeated, ALBC Remedy Exh. 65, 66, and the May 4 Reapportionment Committee Senate plan was adopted. ALBC Remedy Exhs. 65-67. The House approved the substitute SB403 Senate plan on May 18. ALBC Remedy Exhs. 65, 68.

23. The HB571 substitute House plan passed the House on May 11. ALBC Remedy Exh. 69, 70. When it came up in the Senate on May 18, Sen. Smitherman offered two ALBC substitutes, both of which only removed HD 14 from Jefferson County, leaving unchanged all other districts in the HB571 substitute except as needed to restore $\pm 1\%$ deviation. ALBC Remedy Exhs. 69, 74-82. Both

Smitherman substitutes were defeated, and the Reapportionment Committee substitute for HB571 was adopted. ALBC Remedy Exhs. 69-73.

a. The May 12 ALBC first substitute House plan was the best option. ALBC Remedy Exhs. 74-78. It modified the HB571 substitute plan by moving the 5,338 Jefferson County population formerly in HD 14 mostly into HD 16. To restore \pm 1% deviation in HD 14 and in HD 16, small changes were made in 13 other districts: inside Jefferson County, HD 15, 51; outside Jefferson County, HD 1, 2, 3, 7, 13, 17, 18, 41, 43, 49, 73. This modification increased the number of whole counties in HD571 from 21 to 22 by making Lamar County whole and making HD 17 a 1% deviation House district composed entirely of two whole counties, Lamar and Marion. It reduced the number of House districts in Jefferson County from 17 to 16, of which 8 were majority-white and 8 were majority-black. It reduced the number of districts in Winston County from 3 to 2, and the number of districts in Lamar County from 2 to 1, while increasing the number of districts in Walker County from 2 to 3. See ALBC Remedy Exh. 76.

b. The May 13 ALBC substitute House plan modified the HB571 substitute House plan by moving the 5,338 Jefferson County residents from HD 14 to HD 15. ALBC Remedy Exhs. 79-82. To adjust HD 15, its extension into Shelby County (5,525 persons) was removed. To restore \pm 1% deviation in HD 14 and in HD 15, small changes were made in 11 other districts: inside Jefferson

County, HD 51, 44, 45; outside Jefferson County, HD 16, 13, 34, 30, 50, 41, 73, 49. All other districts in HB571 remained unchanged. This modification made no changes in the number of whole counties in HD 571: 21. ALBC Remedy Exh. 81. It reduced the number of House districts in Jefferson County from 17 to 16, of which 8 were majority-white and 8 were majority-black. ALBC Remedy Exhs. 80, 81. It increased the number of House districts in St. Clair County from 3 to 4. ALBC Remedy Exh. 81. All other counties retained the same number of districts in HB571.

24. The Legislature's rejection of the ALBC's several proposals for removing HD 14 or HD 16 (or both of them) and SD 5 from Jefferson County cannot be justified by adherence to the traditional districting principles the Reapportionment Committee co-chairs contended they were applying. "As the plaintiff attorney sent in their requests, we would overlay the existing district and see where we needed to reduce the number of splits in precincts, where we could reduce the size of the scope of a person having multiple counties. We were able to reduce the – significantly the number of dis – of county line splits." State Remedy Exh. 58, Doc. 339-6 at 9 (quoting Rep. Davis). But with eight majority-black House districts and three majority-black Senate districts being redrawn within Jefferson County, even the constitutionally questionable strategy of limiting their

ripple effects, *id.* at 11-12, cannot justify the Legislature's refusal to reduce splits of Jefferson County's boundaries.

25. There were two ALBC proposals for removing SD 5 from Jefferson County.

a. With respect to the April 18 ALBC proposed modification of the Reapportionment Committee Senate plan, it is true, as was pointed out when it came up in the House Committee, State Remedy Exh. 56, Doc. 339-4 at 10, that its removal of SD 5 from Jefferson County had ripple effects that increased the number of Senate districts in Blount and St. Clair Counties. See ALBC Remedy Exhs. 50, 52.

b. But the ALBC Whole County Senate Plan, which never made it out of committee, would not have increased the number of districts in Blount and St. Clair Counties, while reducing the number of districts in DeKalb, Talladega, and Shelby Counties. It would have made whole Winston and Lawrence Counties, while splitting Morgan, Jackson, and Calhoun Counties. Compare ALBC Remedy Exhs. 10, 12 with ALBC Remedy Exhs. 30, 37.

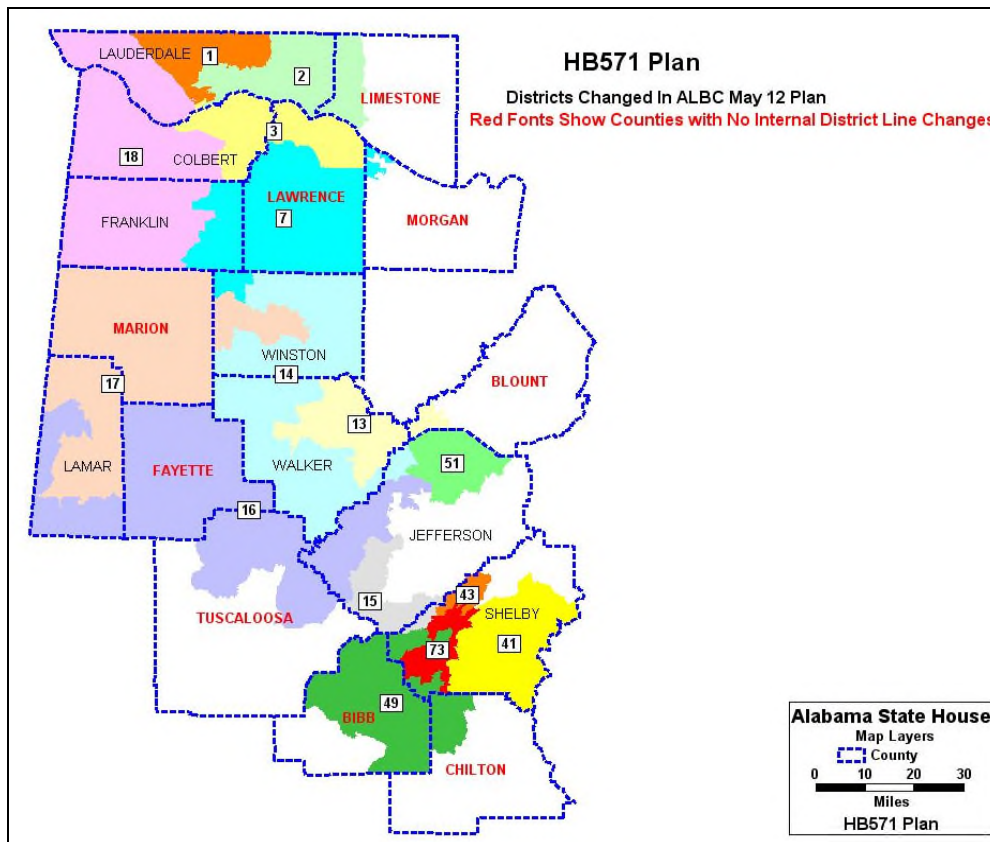
c. Race is the predominant reason why SD 5 was kept in Jefferson County, *i.e.*, to maintain more majority-white than majority-black districts in the Jefferson County Senate delegation.

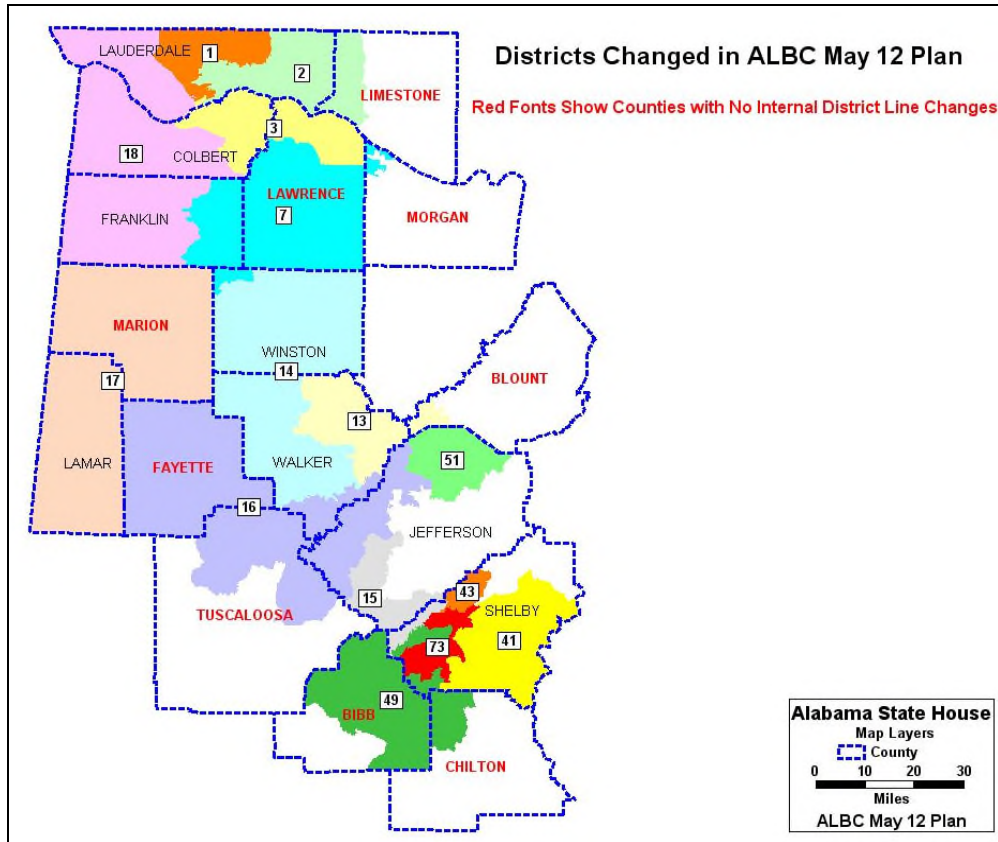
26. There were at least five ALBC proposals for removing HD 14 and/or HD 16 from Jefferson County. The simplest changes to the Reapportionment Committee House plan were the two substitute plans offered in the last week of the Regular Session that would have removed only HD 14.

a. The ALBC May 13 House plan, the second ALBC substitute offered, simply exchanged the 5,338 Jefferson County residents in HD 14 for the 5,525 Shelby residents in HD 15. This would have reduced the number of Jefferson County House districts from 17 to 16. The number of House districts in Shelby County would have remained the same, because the 1% deviation ripple effect would have moved part of HD 50 into Shelby County. Compare ALBC Remedy Exhs. 78, 81 with ALBC Remedy Exhs. 21, 23. The ripple effect also forced HD 34 into St. Clair County, increasing the number of St. Clair districts from 3 to 4. The number of districts in all other counties affected by the ripple would have remained unchanged.

b. The strongest case was made by the ALBC May 12 House plan, the first ALBC substitute offered for HB571. By moving the 5,338 Jefferson County residents in HD 14 to HD 16, it was possible to remove entirely the ugly fish hooks from Lamar County and Winston County, allowing Lamar and Marion Counties to form a perfect HD 17 and reducing the number of districts in Winston County from 3 to 2. ALBC Remedy Exhs. 78, 83, 84. None of the other districts involved in

the 1% deviation ripple effects changed the number of districts in their counties, so the May 12 ALBC substitute made the smallest, most insignificant changes to the rest of the HB571 House plan. There is no nonracial reason for the Legislature's refusal to make this compromise change.





c. Race is the predominant reason why HD 14 and HD 16 both were kept in Jefferson County, to maintain more majority-white than majority-black districts in the Jefferson County House delegation.

27. The Reapportionment Committee co-chairs at times professed partisan motives for maintaining white majorities in the Jefferson County House and Senate delegations.

a. Rep. Davis suggested the reason for maintaining 9 majority-white and 8 majority-black House districts in Jefferson County is partisan not racial: “So, you know, they don’t like the fact that it’s 9, 8 [sic: 9-8], but that was, to me, not a part of the core [sic: court] decree to say how many republicans or democrats are in any district, and that was not a part of what we worked at but just to work for the district.” State Remedy Exh. 58, Doc. 339-6 at 15.

b. Sen. Dial said the same thing about the 4-3 white majority in the Jefferson County Senate delegation: “[T]his plan that you see here is basically the plaintiff’s plan that was presented to us with a difference in Jefferson County. There may be a few tweaks are different in Senator Ross’s district [SD 26]. But the only difference is in Jefferson County and we went as far as we could, Jefferson County previously was five republicans and three democrats. We cut that to four republicans and three democrats.” State Remedy Exh. 57, Doc. 339-5 at 15-16.

28. If the State defends the Legislature’s refusal to take SD 5 and HD 14 or HD 16 out of Jefferson County by contending they are partisan, not racial, gerrymanders, it will pose “special challenges” for this Court. *Cooper v. Harris*, ___ S.Ct. ___, 2017 WL 2216930 (May 22, 2017) at *15. “That is because, of course, racial identification is highly correlated with political affiliation. As a result of those redistricting realities, a trial court has a formidable task: It must make a sensitive inquiry into all circumstantial and direct evidence of intent to assess whether the plaintiffs have managed to disentangle race from politics and prove that the former drove a district’s lines.” *Id.* (internal quotation marks and citations omitted). In the instant case, race was a proxy for party.

a. Like the 2012 drafters, the drafters of the 2017 House and Senate plans relied on racial data, not partisan data, when deciding to keep SD 5, HD 14, and HD 16 in Jefferson County.

b. This Court has acknowledged that “[t]his litigation has a deeply partisan backstory,” namely, that the 2012 redistricting plans were a Republican counter-gerrymander to the Democratic leadership’s pursuit of “a biracial strategy aimed at safeguarding its governing majorities in both houses of the Legislature.” *ALBC v. Alabama*, 2017 WL 378672 at *3 (quoting Brief for Leadership of the Alabama Senate and House of Representatives as Amici Curiae Supporting

Appellees, *Vieth v. Jubelirer*, 541 U.S. 267 (2004)). The Republican leadership did not pursue a biracial strategy.

c. In Alabama the correlation between race and party is no accident; to the contrary, Republicans sought to isolate or segregate black Alabamians in the Democratic Party by urging white Alabamians, and only whites, to switch to the Republican Party. They did not openly announce they were drawing the color line, as Conservative Democrats did in 1874. *Knight v. Alabama*, 787 F.Supp. 1030, 1068 (N.D. Ala. 1991), aff'd in relevant part, 14 F.3d 1534 (11th Cir. 1994). But they based their 2010 election strategy on “an in-depth study of voting patterns in various districts represented by white Democratic legislators across the state.”

MIKE HUBBARD, *STORMING THE STATE HOUSE: THE CAMPAIGN THAT LIBERATED ALABAMA FROM 136 YEARS OF DEMOCRAT RULE* (Kindle Locations 2262-2263)

Kindle Edition (2012). And when the 2012 plans were being drafted, white Democrats, but not black Democrats, were urged by Republican leaders to switch to the Republican Party. *ALBC v. Alabama*, 989 F.Supp.2d 1227, 1250, 1258, 1260, 1265, 1273 (M.D. Ala. 2013), vacated and remanded, 135 S.Ct. 1257 (2015).

This was a continuation of Alabama’s longstanding policy of maintaining a one-party state, dominated by the party of whites. Democrats were the party of whites when they adopted the white supremacist 1901 Constitution and operated all-white primaries until passage of the Voting Rights Act. When African Americans gained

influence in the Democratic Party, white Democrats began shifting to the Republican Party, which today claims the allegiance of most white voters in Alabama.

d. For these reasons, the State should not be allowed to rely on the correlation between race and party to justify the Jefferson County gerrymanders.

29. For all the foregoing reasons, the Legislature's refusal to remove SD 5 and HD 14 and/or HD 16 from Jefferson County violate the Equal Protection Clause:

a. because they are not constitutionally adequate remedies for the racial gerrymandering violations in the 2012 House and Senate plans;

b. because they are themselves unconstitutional racial gerrymanders;
and

c. because they are intended to discriminate against black voters in Jefferson County.

Conclusion.

WHEREFORE, the ALBC plaintiffs pray that this Court will:

A. Schedule a hearing to receive any evidence the Court deems necessary, and, following said hearing:

B. Order the defendants to conduct the 2018 primary and general elections for members of the Legislature utilizing the districts contained in:

1. The ALBC Whole County Senate Plan, SB334, ALBC Remedy Exhs. 10-18, and

2. The May 12 ALBC substitute House modification plan, ALBC Remedy Exhs. 74-78.

C. Alternatively, order the use of such other plans that the Court determines will remedy the constitutional violations in Jefferson County.

D. Plaintiffs pray for such other or additional relief as may be just and equitable, including an award of their reasonable attorneys' fees and expenses.

Respectfully submitted this 13th day of June, 2017.

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