

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

ALABAMA LEGISLATIVE BLACK  
CAUCUS, et al.,

Plaintiffs,

V.

THE STATE OF ALABAMA, et al.,

Defendants.

CASE NO. 2:12-CV-691  
(Three-Judge Court)

ALABAMA DEMOCRATIC  
CONFERENCE, et al.,

Plaintiffs,

V.

THE STATE OF ALABAMA, et al.,

Defendants.

CASE NO. 2:12-CV-1081  
(Three-Judge Court)

## DEFENDANTS' BRIEF ON REMAND

Dorman Walker  
Balch & Bingham LLP  
Post Office Box 78  
Montgomery, AL 36101-0078  
Telephone: 334-834-6500  
[dwalker@balch.com](mailto:dwalker@balch.com)  
**Counsel for Defendants-Intervenors, Jim  
McClendon, Gerald Dial and Randy Davis**

John J. Park, Jr.  
Deputy Attorney General  
Strickland Brockington Lewis LLP  
1170 Peachtree Street NE, Ste 2200  
Atlanta, GA 30309  
Telephone: 678-347-2200  
[jip@sblaw.net](mailto:jip@sblaw.net)  
Counsel for the State Defendants

LUTHER STRANGE  
Attorney General of Alabama

Andrew L. Brasher  
*Solicitor General*  
Megan Kirkpatrick  
*Deputy Solicitor General*  
James W. Davis  
Misty Fairbanks Messick  
*Assistant Attorneys General*  
Office of the Attorney General  
State of Alabama  
Post Office Box 300152  
Montgomery, AL 36130-0152  
Telephone: 334-242-7300  
[abrasher@ago.state.al.us](mailto:abrasher@ago.state.al.us)  
[mkirkpatrick@ago.state.al.us](mailto:mkirkpatrick@ago.state.al.us)  
[jimdavis@ago.state.al.us](mailto:jimdavis@ago.state.al.us)  
[mmessick@ago.state.al.us](mailto:mmessick@ago.state.al.us)  
**Counsel for State Defendants**

David B. Byrne, Jr.  
Office of the Governor  
600 Dexter Avenue, Suite NB-05  
Montgomery, AL 36130  
Telephone: 334-242-7120  
[david.byrne@governor.alabama.gov](mailto:david.byrne@governor.alabama.gov)

Algert S. Agricola, Jr.  
Ryals, Donaldson & Agricola, P.C.  
60 Commerce Street, Suite 1400  
Montgomery, AL 36104  
Telephone: 334-834-5290  
[aagricola@rdafirm.com](mailto:aagricola@rdafirm.com)  
**Counsel for Governor Bentley**

## TABLE OF CONTENTS

Table of Authorities .....	vi
Introduction .....	1
Summary of Argument .....	2
I. Racial Predominance .....	2
II. Strict Scrutiny .....	4
III. Senate Districts.....	6
IV. House Districts.....	8
Argument: Racial Predominance .....	11
I. The plaintiffs must prove that the Legislature placed a substantial number of persons in a district because of their race, even though race-neutral districting principles would require that they be placed elsewhere .....	11
II. The plaintiffs fail to establish racial predominance as a general matter.....	16
A. The plaintiffs have not produced a map of all districts or any districts that complies with the drafters’ race-neutral districting criteria and creates greater racial balance .....	17
B. The Legislature’s decision to adopt a maximum population deviation of $\pm 1\%$ was a permissible, race-neutral, “background” decision, not evidence of a racial gerrymander .....	23
C. County splitting, in general, is not evidence of a racial gerrymander .....	27
D. The percentage of black population of each district does not establish a racial gerrymander.....	30
1. As a factual matter, the percentage target was not applied “mechanically” in derogation of other redistricting criteria .....	31
2. The percentage of black population in a district can just as well be explained by race-neutral criteria .....	33
E. Precinct splitting is not evidence of a racial gerrymander .....	36

1.	There are good reasons to split precincts that have nothing to do with race.....	36
2.	There is no pattern that raises an inference that race is the reason for precinct splits as a general matter.....	37
3.	Unsplitting precincts shows that precinct splits have a negligible effect on a district’s racial composition.....	40
Argument: Strict Scrutiny.....		45
I.	The State has a compelling interest in complying with Section 2 and Section 5 of the Voting Rights Act.....	45
II.	The State’s districts are narrowly tailored .....	48
A.	There is no alternative proposal to meet the undisputed requirements of the Voting Rights Act.....	48
B.	65% black districts are reasonably necessary to comply with the Voting Rights Act .....	53
1.	The record shows that black political leaders supported districts that are approximately 65% black .....	54
2.	Courts have concluded that 65% percent is an appropriate threshold to maintain the ability to elect .....	56
3.	Other States and local governments have been sued under Section 2 for reducing majority-black districts below 70% black .....	59
4.	The plaintiffs’ own expert has opined that majority-black districts in Alabama should be at least 62% black to give black voters an equal opportunity to elect under Section 2.....	61
Argument: Individual Districts.....		63
I.	Senate Districts.....	63
A.	Birmingham (SDs 18, 19, and 20) .....	63
1.	The incumbent senators drew the Birmingham Senate districts. ....	64
2.	The evidence does not establish that the drafters subordinated race-neutral criteria to hit a “target.” .....	65

3.	The evidence does not establish that the drafters split precincts on the basis of race or that, if they did, such splitting was (1) inconsistent with race-neutral criteria or (2) affected a substantial number of voters .....	68
4.	SD18, SD19, and SD20 satisfy strict scrutiny.....	69
B.	West Black Belt (SD 23 and SD24) .....	70
1.	These districts were underpopulated, and geography and incumbent wishes limited the drafters’ options for adding population .....	70
2.	The evidence does not establish that the drafters subordinated race-neutral criteria to hit a “target.” .....	72
3.	The evidence does not establish that the drafters split counties on the basis of race.....	74
4.	The evidence does not establish that the drafters split precincts in contravention of race-neutral principles .....	76
5.	SD23 and SD24 satisfy strict scrutiny.....	77
C.	Montgomery (SD 26) .....	78
1.	SD26’s shape and population percentages result from the application of race-neutral criteria .....	78
2.	The black population percentage of SD26 results from Montgomery’s demographics and does not support plaintiffs’ racial gerrymandering claim .....	83
3.	Additional evidence submitted on remand confirms that the drafters did not subordinate race-neutral considerations. ....	86
4.	Precinct splits do not show that race predominated .....	88
5.	SD26 satisfies strict scrutiny .....	88
D.	East Black Belt (SD 28) .....	90
1.	The drafters made only a few changes to SD28, in cooperation with the incumbent.....	90

2.	The black population percentage has remained constant over the years and is consistent across alternative plans, reflecting the demographics of the area .....	93
3.	Unsplitting precincts does not significantly change the black population percentage .....	94
4.	SD28 satisfies strict scrutiny .....	95
E.	Mobile (SD33) .....	96
1.	Population shifts required changes with limited options. ....	96
2.	The black population percentage is not evidence of racial predominance.....	99
3.	Precinct and county splits do not establish racial predominance.....	101
4.	SD33 satisfies strict scrutiny in any event.....	102
II.	House Districts.....	103
A.	Madison County (HDs 19 and 53).....	103
B.	House District 32.....	110
C.	The Birmingham House Districts (HDs 52, 54-60).....	113
1.	House District 52 .....	116
2.	House District 54 .....	118
3.	House District 55 .....	120
4.	House District 56 .....	121
5.	House District 57 .....	122
6.	House District 58 .....	122
7.	House District 59 .....	124
8.	House District 60 .....	125
D.	West Black Belt (HDs 67-72) .....	127
1.	House District 67 .....	129

2.	House District 68.....	131
3.	House District 69.....	133
4.	House District 70.....	136
5.	House District 71.....	138
6.	House District 72.....	140
E.	Montgomery County (HDs 76-78).....	145
F.	East Black Belt (HDs 82-85).....	149
1.	House District 82.....	150
2.	House District 83.....	153
3.	House District 84.....	155
4.	House District 85.....	157
G.	Mobile County (HD 97-99, and HD103) .....	159
1.	House District 97.....	160
2.	House District 98.....	162
3.	House District 99.....	162
4.	House District 103.....	163
	Conclusion.....	163
	Certificate of Service.....	166

## TABLE OF AUTHORITIES

## Cases

<i>Abrams v. Johnson</i> , 521 U.S. 74 (1997) .....	49, 50
<i>African Am. Voting Rights Legal Def. Fund, Inc. v. Villa</i> , 54 F.3d 1345 (8th Cir. 1995) .....	57
<i>ALBC v. Alabama</i> , 135 S. Ct. 1257 (2015) .....	passim
<i>ALBC v. Alabama</i> , 989 F. Supp. 2d 1227 (M.D. Ala. 2013) .....	56
<i>Arizona v. California</i> , 460 U.S. 605 (1983).....	27
<i>Barnett v. City of Chicago</i> , 141 F.3d 699 (7th Cir. 1998) .....	58
<i>Barnett v. Daley</i> , 32 F.3d 1196 (7th Cir. 1994) .....	57
<i>Bush v. Vera</i> , 517 U.S. 952 (1996).....	47
<i>Campuzano v. Ill. State Bd. of Elections</i> , 200 F. Supp. 2d 905 (N.D. Ill. 2002) .....	59
<i>Comm. for a Fair &amp; Balanced Map v. Ill. State Bd. of Elections</i> , 835 F. Supp. 2d 563 (N.D. Ill. 2011) .....	59
<i>Connor v. Finch</i> , 431 U.S. 407 (1977).....	28
<i>Cottier v. City of Martin</i> , 604 F.3d 553 (8th Cir. 2010) .....	58
<i>Cousin v. Sundquist</i> , 145 F.3d 818 (6th Cir. 1998) .....	58
<i>Cox v. Larios</i> , 542 U.S. 94 (2004) .....	24



<i>Dillard v. Crenshaw County</i> , 649 F. Supp. 289 (M.D. Ala. 1986) .....	58
<i>Easley v. Cromartie</i> , 532 U.S. 234 (2001).....	14, 18, 19, 22
<i>Fund for Accurate &amp; Informed Representation, Inc. v. Weprin</i> , 796 F. Supp. 662 (N.D.N.Y.), <i>aff'd</i> , 506 U.S. 1017 (1992) .....	59
<i>Gingles v. Edmisten</i> , 590 F. Supp. 345 (E.D.N.C. 1984), <i>aff'd in part, rev'd in part sub nom.</i> <i>Thornburg v. Gingles</i> , 478 U.S. 30 (1986) .....	58
<i>Ketchum v. Byrne</i> , 740 F.2d 1398 (7th Cir. 1984) .....	57
<i>Kirkpatrick v. Preisler</i> , 394 U.S. 526 (1969).....	24
<i>Larios v. Cox</i> , 300 F. Supp. 2d 1320 (N.D. Ga. 2004), <i>aff'd</i> , 542 U.S. 947 (2004).....	24
<i>Latino Political Action Comm., Inc. v. City of Boston</i> , 784 F.2d 409 (1st Cir. 1986) .....	57
<i>McCullen v. Coakley</i> , 134 S. Ct. 2518 (2014) .....	49
<i>Miller v. Johnson</i> , 515 U.S. 900 (1995).....	11, 13
<i>Mississippi v. United States</i> , 490 F. Supp. 569 (D.D.C. 1979), <i>aff'd sub nom. United States v. Mississippi</i> , 444 U.S. 1050 (1980).....	58
<i>Missouri v. Jenkins</i> , 515 U.S. 70 (1995) .....	51
<i>Neal v. Coleburn</i> , 689 F. Supp. 1426 (E.D. Va. 1988) .....	58
<i>Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1</i> , 551 U.S. 701 (2007).....	49
<i>Pennhurst State Sch. &amp; Hosp. v. Halderman</i> , 465 U.S. 89 (1984) .....	26, 29

<i>Prosser v. Elections Bd.</i> , 793 F. Supp. 859 (W.D. Wisc. 1992).....	59
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1984).....	23
<i>Rice v. English</i> , 835 So. 2d 157 (Ala. 2002).....	29
<i>Shaw v. Reno</i> , 509 U.S. 630 (1993).....	47, 108
<i>Shelby County v. Holder</i> , 133 S. Ct. 2612 (2013) .....	45
<i>Texas v. United States</i> , 831 F. Supp. 2d 244 (D.D.C. 2011).....	56, 57, 59
<i>Thornburg v. Gingles</i> , 478 U.S. 30 (1986) .....	46
<i>United Jewish Organizations of Williamsburgh, Inc. v. Carey</i> , 430 U.S. 144 (1977).....	56
<i>Village of Arlington Heights v. Metropolitan Housing Development Corp.</i> , 429 U.S. 252 (1977).....	52
<i>Voinovich v. Quilter</i> , 507 U.S. 146 (1993).....	54
<i>Wilson v. Jones</i> , 130 F. Supp. 1315 (S.D. Ala. 2000) .....	61, 62
<b>Statutes</b>	
42 U.S.C. § 1973.....	46
52 U.S.C. § 10301.....	46
<b>Other Authorities</b>	
Brief for the United States as Amicus Curiae Supporting Neither Party, <i>ALBC v. Alabama</i> , 135 S. Ct. 1257 (2015) (No. 13-895) .....	11, 30
Brief of the Lawyers Committee for Civil Rights Under Law as Amicus Curiae in Support of Neither Party, <i>ALBC v. Alabama</i> , 135 S. Ct. 1257 (2015) (No. 13-895) .....	12, 13

Complaint, <i>Black Political Task Force v. Finneran</i> , No. 1:02-cv-11190-DPW (D. Mass. June 13, 2002) .....	60
Complaint, <i>Figgs v. Quitman County</i> , No. 4:14-cv-00119-MPM-JMV (N.D. Miss. Aug. 15, 2014) .....	60, 61
Doc. 21-5, <i>Allen v. Evergreen</i> , No. 1:12-cv-00496-CG-KD-EC (S.D. Ala. Dec. 12, 2012).....	60
Order Noting Probable Jurisdiction, <i>Harris v. Arizona Independent Redistricting Commission</i> , No. 14-232 (Jun. 30, 2015) .....	24
S. Rep. No. 97-417 (1982), reprinted in 1982 U.S.C.C.A.N. 177 .....	48
Trans. of Oral Argument, <i>Alabama Democratic Conference v. Alabama</i> , 13- 895, 13-1138 (Nov. 12, 2014) .....	15
 <b>Constitutional Provisions</b>	
ALA. CONST. art. IX, §200 .....	28

#### TABLE OF ABBREVIATIONS

ADC	Alabama Democratic Conference; also the plaintiffs associated with the Alabama Democratic Conference
ADC Supp. Ex.	A supplemental exhibit introduced post-remand by the ADC
ALBC	Alabama Legislative Black Caucus; also the plaintiffs associated with the Alabama Legislative Black Caucus
APX	An exhibit introduced at trial by the ALBC
APSX	A supplemental exhibit introduced post-remand by the ALBC
C	A “common” exhibit introduced at trial by all parties
Def. Supp. Ex.	A supplemental exhibit introduced post-remand by the defendants
Doc.	A docket entry in this case
Ex.	An exhibit to this brief
HD	House district
NPX	An exhibit introduced at trial by the Newton plaintiffs
Rep.	Representative
SD	Senate district
SDX	An exhibit introduced at trial by the defendants
Sen.	Senator
Tr.	Trial transcript; citations are to volume.page number (ex.: Tr. 1.123)

## INTRODUCTION

The Supreme Court gave the plaintiffs a mulligan, but they are in the rough again. The plaintiffs declined to introduce evidence about any specific districts, even though they failed to introduce it before. (Doc. 229 at 2). They continue to challenge the population deviation, even though the Supreme Court said to take it “as a given.” And they have proposed yet another fantastical redistricting plan, even though they had years to prepare a realistic one. Because the plaintiffs have never made a record on racial gerrymandering claims—and apparently do not want to—they are left with generic arguments about specific districts.

“To suggest that race is the only dynamic at play here is absurd.” (Doc. 203 at 150). Instead, the plaintiffs are challenging 36 districts in a long-shot bid to upset the Legislature’s partisan balance. (Doc. 203 at 150). The plaintiffs are challenging single-county districts as racial gerrymanders. They are challenging districts they drew as racial gerrymanders. They are challenging districts as racial gerrymanders because they are too close to a “target” and because they are too far from it.

The plaintiffs have wasted their second chance. In this brief, the defendants first discuss the legal standards for racial predominance and strict scrutiny, addressing the plaintiffs’ arguments in general. Then, the defendants apply this reasoning to each challenged district and show that the record does not prove that race conflicted with and predominated over traditional districting criteria; or, in the alternative, that each district satisfies strict scrutiny. For both reasons, the Court should reject these claims and enter judgment in favor of the defendants.

## SUMMARY OF ARGUMENT

This brief has four main parts. First, we explain what the Supreme Court held when it remanded this case, how this Court should determine whether race predominated, and whether the plaintiffs' arguments, as a general matter, are even relevant to that inquiry. Second, even assuming that race predominated in all or some of the challenged districts, we explain that the State's districts satisfy strict scrutiny. Third, we address each individual majority-black Senate district and the evidence, or lack of evidence, about why the Legislature drew it as it did. Fourth, we do the same thing for each individual majority-black House district.

### **I. Racial Predominance**

The plaintiffs have the burden to establish that the drafters placed a substantial number of voters in a district because of their race in conflict with race-neutral districting criteria. To make that showing in this case, the plaintiffs must identify decisions that the drafters made that affected substantial numbers of voters, not a minimal number of voters. Then, the plaintiffs must show that the drafters' decision with respect to those voters was in contravention of race-neutral districting criteria. In short, the plaintiffs must show that but for the drafters' consideration of race, the challenged district would be substantially different.

As a general matter, the plaintiffs' arguments do not meet their burden of proof.

First, the plaintiffs have never proposed a redistricting plan for all the districts or any district that shows how the drafters could have met their race-neutral objectives in a way that creates greater racial balance. The plaintiffs'

statewide plans reject the drafters' standard of population deviation, which the Supreme Court described as a "background" factor that must be "taken as a given." They reject the drafters' most important race-neutral districting criteria, such as preserving the core of existing districts and meeting the needs of incumbents. Even so, many of the districts in plaintiffs' proposed plans are similar to the same districts in the drafters' plan.

Second, the plaintiffs cannot attack the "background" factor of the  $\pm 1\%$  standard of population deviation as part of their racial gerrymandering claim. The Supreme Court said this standard must be "taken as given." Federal law favors greater equality, not lesser. There is no evidence that the drafters adopted the  $\pm 1\%$  standard for a discriminatory purpose. And any purported state law restriction on the use of a  $\pm 1\%$  standard is unenforceable in this federal litigation.

Third, the plaintiffs cannot invoke county wholeness as the "most important" redistricting criterion in Alabama. It is undisputed that counties were split for many reasons and, in fact, must be split to equalize population. It is up to the Legislature—not the plaintiffs or the federal courts—to identify the "most important" redistricting criterion. And it is undisputed that the Legislature here often prioritized other interests—such as incumbent protection—over county wholeness.

Fourth, the percentage of black population in each district does not provide evidence of racial predominance. The drafters' so-called "target" percentage was not applied in a mechanical manner; the drafters made race-neutral changes and then

checked the new districts for compliance with the Voting Rights Act, not vice versa. Moreover, the drafters' race-related objective of complying with federal law was coextensive with their race-neutral objectives, including consistency between the old and new districts. Those race-neutral objectives explain why many districts, even majority-white districts, have the same racial composition under the new plan as they did under the old plan.

Finally, the plaintiffs' extensive reliance on precinct splits does not help them establish predominance. On this record, we do not know why any particular precinct was split. It is undisputed that there are race-neutral reasons to split precincts, but the plaintiffs cannot distinguish between splits that are consistent with race-neutral criteria and those that may not be. The plaintiffs say that precincts were split because of race, even if the split placed a majority of white voters in a majority-black district. Moreover, the precinct splits did not affect a large number of people. We have reverse-engineered the precinct splits for each individual district. Ending precinct splits within a particular district very rarely changes the racial composition of that district in a significant way.

## **II. Strict Scrutiny**

Assuming that the plaintiffs meet their burden to show that the drafters subordinated race-neutral districting criteria to race in any particular district, these districts are still constitutional because they satisfy strict scrutiny. At this stage, there is no meaningful dispute that the drafters had a compelling interest in complying with Section 5 and Section 2 of the Voting Rights Act. It is undisputed that the drafters had to preserve the same number of majority-black districts as in



the previous plan and had to ensure that those districts had enough black population to maintain the ability to elect. The ADC suggests that the State has no compelling interest in complying with the Act because individual legislators were mistaken about its requirements. But the State has an interest in complying with federal law, no matter how individual legislators understand it. And the ADC's argument is more about narrow tailoring, in any event.

The districts in these plans are also narrowly tailored. First, the drafters' plans are the only proposed plans that comply with the undisputed requirements of the Voting Rights Act. State action is narrowly tailored when there is no readily-available, less-constitutionally-problematic alternative that similarly furthers the State's compelling interest. The plaintiffs' competing plans reject "background" factors that must be "taken as a given." They also fail to comply with the Voting Rights Act on their own terms: they eliminate majority-black districts and draw the remaining majority-black districts with black populations lower than even their own expert attested is necessary to comply with federal law. Every district in the drafters' plans is narrowly tailored.

Second, and in the alternative, all districts that are approximately 65% black or less are narrowly tailored. To be narrowly tailored, a plan does not have to meet the lowest possible black percentage that would be acceptable to a court or to the Department of Justice. Instead, the black percentage needs to be supported by "substantial evidence." 65% is supported by "substantial evidence." During the redistricting process, black political leaders told the drafters and the public that

districts between 60% and 65% black were necessary to protect black voters' ability to elect. Federal case law from the U.S. Supreme Court, courts of appeal, and district courts (including this district court) suggest that 65% is a useful rule of thumb. Even recently, after the 2000 and 2010 Censuses, plaintiffs (including those represented by the ADC's lawyer here) have sued under Section 2 when redistricters reduced black population lower than 70%. Finally, the plaintiffs' own expert previously testified in another Alabama case that districts should be approximately 65% black.

### **III. Senate Districts**

Race did not predominate in drawing SD18, SD19, and SD20, which are the majority-black Senate districts in Birmingham. These districts were drawn almost entirely by the incumbent legislators. The plaintiffs' plans have roughly the same racial percentages in each of these districts. And the racial composition of these districts is roughly the same, even when precinct splits are eliminated. Moreover, these districts are all approximately 65% black or less.

Race did not predominate in drawing SD23 and SD24, which are the majority-black Senate districts in the West Black Belt. These districts cover counties with significant black populations. They were drawn to meet the wishes of incumbents. The most unusual geographic feature in these districts—the "hook" in SD24—appears in the plaintiffs' plans as well. Moreover, these districts are all approximately 65% black or less.

Race did not predominate in drawing SD26, which is the majority-black Senate district in Montgomery. This Court has already made fact-findings about

why SD26 was drawn as it was drawn; it should reaffirm those findings. This district has been more than 70% black for 25 years. Even if all precinct splits are eliminated, it would still be 73% black, which is higher than the so-called “quota.” Additional evidence submitted on remand shows that the district’s most unusual features follow precinct lines, that the drafters’ choices were constrained by where the incumbents lived, that the basic outline of this district is consistent with county commission districts, and that 98% of the residents in this district reside in the City of Montgomery.

Race did not predominate in drawing SD28, which is the majority-black Senate district in the East Black Belt. We know very little about this district, and the Supreme Court did not include it in its chart of districts to which the plaintiffs had preserved a racial gerrymandering claims. To the extent we know anything, the drafters testified that this district was drawn to meet the wishes of the incumbent. Moreover, this district is less than 65% black.

Race did not predominate in drawing SD33, which is the majority-black Senate district in Mobile. The only way to draw SD33 differently is to expand east across Mobile Bay, which was opposed by Republican senators, or to expand west, which was impossible because of the residence of the incumbent in SD34. If one eliminates the precinct splits in this district, the black population percentage decreases by .08%.

#### **IV. House Districts**

There is very little evidence about why the lines of any specific House district were drawn as they were. But the evidence that is in the record belies the plaintiffs' arguments that race predominated over race-neutral districting criteria.

Race did not predominate in drawing HD19 or HD53, which are the majority-black House districts in Madison County. The new HD19 failed to meet its "target" by almost 9%. The black population of HD19 would be reduced by only 1.3% if precinct splits were eliminated. The black population of HD53 would be increased by 0.01% if precinct splits were eliminated. These districts are less than 65% black.

Race did not predominate in drawing HD32 in Talladega County. The district preserves the core, its previous shape, and the incumbent. Moreover, the plaintiffs suggested at trial that the black population of Talladega County is a "community of interest" that should be placed in the same district. This district is less than 65% black.

Race did not predominate in drawing HD52, HD54, HD55, HD56, HD57, HD58, HD59, or HD60, which are the majority-black House districts in Birmingham. The Republican Legislature repopulated these districts by consuming the population of a centrally-located district represented by a Democrat. These districts merely reflect the racial demographics of the local area. Many of these districts match the racial demographics of the same districts in the plaintiffs' plans. In many of these districts, unsplitting precincts increases the black population. And HD54, HD58, and HD59 were drawn to suit the needs of the incumbents in those districts. Moreover, HD52, HD54, HD56, and HD57 are less than 65% black.

Race did not predominate in drawing HD67, HD68, HD69, HD70, HD71, or HD72, which are the majority-black House districts in the West Black Belt. HD67 is practically a single-county district and has the same racial composition in every proposed plan. HD68 preserved the incumbent and the shape of the previous district, but also expanded to add population in the only direction possible—to the east and south. HD69 contains the same entire counties as it previously did, but expanded in the only direction possible—east into Montgomery County, where there was additional population. HD70 is in the City of Tuscaloosa, has the same racial composition in every proposed plan, and, without precinct splits, would increase in black population. HD71 expanded north until it hit the residence of a neighboring incumbent to add population; without precinct splits, its black population would marginally increase. HD72 was clearly drawn to reach and incorporate small towns at each of its four corners. Finally, HD68, HD69, HD70, HD71, and HD72 are approximately 65% black or less.

Race did not predominate in drawing HD76, HD77, HD78, which are the majority-black House districts in Montgomery. These districts were drawn by an incumbent, and they vary greatly from the “target.” The plaintiffs’ plans draw these districts with similar demographics.

Race did not predominate in drawing HD82, HD83, HD84, or HD85, which are the majority-black House districts in the East Black Belt. The Supreme Court’s opinion suggests that the plaintiffs did not preserve any arguments as to these districts. These districts are similar to comparable districts in the plaintiffs’ plans.

HD83 was obviously drawn to connect the population centers of Opelika and Phenix City, as it has always done. These districts are all below 65% black.

Race did not predominate in drawing HD97, HD98, HD99, and HD103, which are the majority-black House districts in Mobile. The Supreme Court's opinion suggests that the plaintiffs did not preserve any arguments as to these districts. All of these districts miss their "target." The racial demographics of these districts are also comparable to those in the plaintiffs' plans. If the precincts in HD97, HD98, HD99, or HD103 were unsplit, their black population would increase. These districts are all approximately 65% black or less.

\* \* \*

The Court should enter judgment in favor of the defendants. The plaintiffs have not shown that race predominated with respect to all the districts or any district. But, even if they had, these districts meet strict scrutiny.

### ARGUMENT: RACIAL PREDOMINANCE

To require heightened scrutiny, the plaintiffs have the burden of showing that “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *ALBC v. Alabama*, 135 S. Ct. 1257, 1265 (2015) (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). This means that they “must prove that the legislature subordinated traditional race-neutral districting principles . . . to racial considerations.” *Id.* at 1270 (quoting *Miller*, 515 U.S. at 916). Put another way, the question is “whether the legislature placed race *above* traditional districting considerations in appropriately apportioned districts.” *Id.* at 1271 (emphasis added; internal quotations omitted). This Part addresses how the plaintiffs have failed to prove racial predominance as a general matter.

**I. The plaintiffs must prove that the Legislature placed a substantial number of persons in a district because of their race, even though race-neutral districting principles would require that they be placed elsewhere.**

Let us be frank about what happened in the appeal of this case. Neither the plaintiffs nor the defendants suggested the disposition that the Supreme Court ultimately adopted. Instead, the Court adopted the arguments of two *amici* that filed briefs in support of neither party: the United States and the Lawyers Committee on Civil Rights. Those *amici* argued that the case should be “remanded” for a “fact-intensive review” of individual districts. Brief for the United States as Amicus Curiae Supporting Neither Party at 15, *ALBC v. Alabama*, 135 S. Ct. 1257 (2015) (No. 13-895). *See also* Brief of the Lawyers Committee for Civil Rights Under

Law as Amicus Curiae in Support of Neither Party at 12, *ALBC v. Alabama*, 135 S. Ct. 1257 (2015) (No. 13-895). And that is what the Court did: “[T]he District Court’s undifferentiated statewide analysis is insufficient. And we must remand for consideration of racial gerrymandering with respect to the individual districts subject to the appellants’ racial gerrymandering challenges.” *ALBC*, 135 S. Ct. at 1266.

In adopting the arguments of the United States and Lawyers Committee, the Supreme Court made two things unmistakably clear: (1) the plaintiffs have the burden to establish that the Legislature placed a “*significant number*” of voters in an “*individual*” district because of race; and (2) the plaintiffs have the burden to establish that the Legislature’s decision was contrary to and in derogation of other race-neutral objectives such that a district would have been drawn differently if race were not a consideration. We discuss each prong of the analysis in turn.

First, the Court held that the plaintiffs cannot prove a racial gerrymandering claim without evidence about the Legislature’s reasons for placing a “significant number” of voters in a specific district. A racial gerrymandering claim “applies to the boundaries of individual districts;” it is “a claim that race was improperly used in the drawing of the boundaries of one or more specific electoral districts.” *Id.* at 1265. The Court held that “the plaintiff’s burden in a racial gerrymandering case is ‘to show, either through circumstantial evidence of a district’s shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature’s decision *to place a significant*



*number of voters within or without a particular district.”* *Id.* at 1267 (quoting *Miller*, 515 U. S., at 916) (emphasis added).

In other words, this Court must evaluate whether the Legislature made any specific decisions with respect to an individual district such that a “significant number” of voters was placed into that district because of their race. As the Lawyers Committee explained in its brief to the Court, “[n]either awareness of racial demographics, nor irregular shape, nor split political subdivisions is sufficient alone to trigger strict scrutiny.” Brief of the Lawyers Committee for Civil Rights Under Law as Amicus Curiae in Support of Neither Party at 7, *ALBC v. Alabama*, 135 S. Ct. 1257 (2015) (No. 13-895). Nor is “[a]n election district’s minority percentage . . . mathematical evidence of racially driven distortions of district boundaries.” *Id.* at 20. Instead, as the Supreme Court held, there must be evidence that considerations of race had “a direct and significant impact” on the shape of the district by controlling the placement of a “significant number” of persons. *ALBC*, 135 S. Ct. at 1271.

Second, although it did not resolve whether race predominated in any specific district, the Court explained “what ‘predominance’ is about.” *Id.* at 1270. Citing *Miller* again, the Court held that it is not enough for a plaintiff to show that race was *a consideration* in the placement of a significant number of voters. Instead, a plaintiff must “prove that the legislature subordinated traditional race-neutral districting principles”—including the “offsetting” principles of “incumbency protection” and “political affiliation”—“to racial considerations.” *Id.* at 1270 (quoting *Miller v. Johnson*, 515 U.S. at 916 (emphasis in *ALBC* omitted). Accordingly, the

inquiry here is whether the Legislature's alleged use of race *conflicted* with its acknowledged race-neutral goals of politics, incumbency protection, core preservation, and the preservation of communities of interest. If a race-related goal *coincides* with a race-neutral principle, instead of *conflicting* with it, then the Legislature could not have "subordinated" that principle to "racial considerations." *Id.*

Simply put, it is the plaintiffs' burden to show that considerations of race *conflicted* with race-neutral objectives and then trumped those objectives, such that a different district would have been drawn *but for* the race-related consideration. The Supreme Court explained in a previous case that a plaintiff "must show *at the least* that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles" and "that those districting alternatives would have brought about significantly greater racial balance." *Easley v. Cromartie*, 532 U.S. 234, 258 (2001) (emphasis in original). And, in this case, the Supreme Court expressly agreed with the United States that "'predominance' in the context of a racial gerrymandering claim is special." *ALBC*, 135 S. Ct. at 1270–71 (citing and quoting United States' brief). "Predominance" does not mean that race was a subjectively important consideration; instead, as the United States Solicitor General told the Court, race predominates only where race-neutral objectives and a race-related objective *conflict*:

JUSTICE KAGAN: Well, how can it not be? If you have three priorities or three criteria and you say this is the absolute most

important criteria, it's just the natural effect of that is going to be to minimize the other two criteria.

GENERAL VERRILLI: No, that's not necessarily true. Sometimes they will conflict, sometimes they won't.

\* \* \*

A challenge, a Shaw challenge, is a challenge to a facially neutral government action. The lines on the map are what are being challenged here. That's the government action. Those lines are facially neutral. They may, in fact, reflect a violation of the Constitution under Shaw if race predominated in the placement of those lines in derogation of traditional districting criteria. But that's what you've got to prove, and the mere existence of this motive doesn't prove it for each district, and that's our point.

Trans. of Oral Argument, *Alabama Democratic Conference v. Alabama*, 13-895, 13-1138, 31:21–32:3, 37:17–38:1 (Nov. 12, 2014).

The plaintiffs' arguments on remand are inconsistent with the Supreme Court's mandate, which adopted the United States' position on "predominance." The plaintiffs do not even attempt to explain how the Legislature's race-neutral objectives—such as preserving the cores of existing districts or protecting incumbents—conflict with the race-related objective to preserve the pre-existing majority-black districts as they had been. The plaintiffs focus on precinct splits that affect small percentages of voters, not a "significant number" of voters. And the plaintiffs have still not proposed a redistricting plan that shows it is even *possible* for the Legislature to have "achieved its legitimate political objectives" in any other way.

Instead of attempting to meet their burden, the plaintiffs are recycling their old, rejected statewide arguments. They continue to argue that it is the *State's* burden to show that race did *not* predominate, even though the Supreme Court said the opposite. They continue to challenge the population deviation, even though the Court described that as a “background” factor that should be “taken as a given.” *ALBC*, 135 S. Ct. at 1270. They continue to argue that the State should have added predominantly white areas to majority-black districts, even though such decisions would be *inconsistent* with race-neutral districting principles, not supported by them. These arguments died at the Supreme Court.

As explained in more detail below, the plaintiffs have not met their burden to establish that race predominated with respect to all the majority-black districts or any specific district.

## **II. The plaintiffs fail to establish racial predominance as a general matter.**

In our district-specific section below, we separately discuss each individual majority-black district and explain why the plaintiffs have not proven that race predominated over traditional redistricting principles in the drawing of each district. But before we get to that level of detail, this section explains why the plaintiffs’ arguments fail in general terms. The elements of the districting plan that plaintiffs point to — county splits, precinct splits, the population deviation, and the rough consistency between the old and new majority-black districts — are not evidence of anything at all. They are certainly not evidence that non-racial redistricting criteria were subordinated to race-related criteria.

The plaintiffs' arguments fail to meet their burden of proof in five ways. First, they fail because the plaintiffs have never proposed any way to draw these districts that is both (1) consistent with the drafters' race-neutral redistricting criteria and (2) achieves greater racial balance. Instead, all the plaintiffs' proposals expressly reject important elements of the drafters' race-neutral criteria and, even then, do not achieve much in terms of racial balance. Second, the plaintiffs' arguments fail because they cannot attack, as part of their racial gerrymandering claim, the drafters' race-neutral "background" principle of the  $\pm 1\%$  population deviation, which must be "taken as a given." *ALBC*, 135 S. Ct. at 1270. Third, the plaintiffs' arguments fail because they have not linked any specific county split to any race-based objective, and county splits will happen in any plan regardless of race. Fourth, their arguments fail because the racial composition of a district alone cannot establish whether non-racial criteria were subordinated to achieve that racial composition. Fifth, the plaintiffs' arguments fail because the split precincts that they cite as evidence of racial gerrymandering can be explained by race-neutral criteria and, in any event, make little difference in the racial composition of the districts.

**A. The plaintiffs have not produced a map of all districts or any districts that complies with the drafters' race-neutral districting criteria and creates greater racial balance.**

The plaintiffs have failed the very first step of proving a racial gerrymandering claim: to show that it is *possible* to satisfy the drafters' race-neutral redistricting criteria in another way by introducing a competing plan. *See Easley*,

532 U.S. at 258. This is a telling omission. The plaintiffs had years over the course of this litigation to come up with a plan for one or more House or Senate districts that actually complies with the drafters' race-neutral districting criteria. Then, on remand from the Supreme Court, the plaintiffs expressly declined to introduce evidence that it was *possible* to draw one or more of the districts in a different way. And now, at the last minute and as part of its briefing, the ALBC has attempted to introduce yet another new plan, but it still consistently rejects the drafters' race-neutral districting criteria.

The drafters' race-neutral criteria were political in nature and tied to the fact that Republicans took control of the Legislature for the first time since Reconstruction. First, after Democrats had used a 10% population deviation for partisan gerrymandering (Doc. 203 at 18–19, 21), the Republican Legislature adopted a tighter deviation standard of  $\pm 1\%$ . (Doc. 203 at 133; SDX 420). The Supreme Court explained that, for the purposes of this racial gerrymandering claim, this population deviation is a “background” fact that must “be taken as a given,” *ALBC*, 135 S. Ct. at 1270, akin to the “background” fact that there are 35 Senate districts and 105 House districts. Second, the Republicans who controlled the Legislature wanted to *keep things the same*. As this Court found, the drafters sought to “maintain the characteristics of the preexisting districts to the extent possible.” (Doc. 203 at 30). This means that the drafters followed preexisting district lines, avoided “contests between incumbent members,” and preserved communities of interest. (SDX 420). Third, the drafters had to enact a plan that

satisfied individual members of the Legislature, including Democrats.<sup>1</sup> Lastly, the drafters sought to keep districts compact, required that districts be contiguous, and avoided splitting counties. (SDX 420).

The plaintiffs have never produced a plan that complies with the “background” principle of a  $\pm 1\%$  population deviation or the drafters’ other “legitimate political objectives.” This defect is more than revealing; it is fatal to plaintiffs’ claims. For “[i]n a case such as this one,” a plaintiff “must show *at the least* that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles” and “that those districting alternatives would have brought about significantly greater racial balance.” *Easley*, 532 U.S. at 258 (emphasis added). Race cannot have conflicted with and predominated over “legitimate political objectives” in the challenged plans *if those plans are the only known way to satisfy those objectives*.

---

<sup>1</sup> There was ample testimony that the drafters acceded to the demands of Democrats and other incumbents: “And remember, this plan has to pass the Legislature, so I can't begin to cause dissension so that I don't have the 18 votes I need to pass this.” (Tr. 1.42) (Testimony of Sen. Dial). That meant, to the extent possible, giving each incumbent a district to run in, as discussed above. And it meant accommodating incumbent requests about their own districts, such as accommodating Sen. Smitherman's plans for the Birmingham minority Senate districts. (Tr. 3.121, 127-128). Such as incorporating Rep. McClammy's plans for the Montgomery minority House districts. (Tr. 3.134-135, 229-30). Such as working with Sen. Beasley (D) on the plans for expanding SD28 into Dothan. (Tr. 1.143). Such as adding a portion of Greene County into HD61 to include the location of Rep. Harper's cabin. (Tr. 3.168). Such as Sen. Irons' request to reconfigure the boundaries of SD1 to incorporate her law office and family members' residences (although those revisions did not pass because Sen. Keahey, a Democrat, prevented them by demanding a reading of the bill). (Tr. 1.180, 183). Such as complying with requests to split counties. (Tr. 3.135-36). Such as accommodating changes to internal boundaries at the request of three white Democrats who represented contiguous districts in northwest Alabama. (Tr. 3.230-31). Such as the similar changes requested by three Democrats, two black and one white, who represented contiguous districts in Birmingham. (Tr. 3.231-32). Such as avoiding bringing Baldwin County or Mobile County Senate districts across Mobile Bay. (Tr. 1.41-42; APX 75 at 58-59, 107-108).

If the Legislature could have drawn the majority-black districts in a different way while still meeting its race-neutral districting criteria, it would be easy to prove. Plaintiffs could simply produce an alternative plan that observed the  $\pm 1\%$  standard of deviation and the Legislature's other race-neutral criteria, such as preservation of district cores and avoiding incumbency conflicts. But the plaintiffs have refused to do so. Instead, they produce plans that continue the prior practice of widely varying population, do not preserve the core districts, and put incumbents (typically Republicans) together in the same district. All of these plans expressly reject the  $\pm 1\%$  population deviation "background" principle and the drafters' "legitimate political objectives." They cannot help the plaintiffs meet their burden to establish racial gerrymandering.

Yet even after rejecting the drafters' race-neutral criteria and background principles, the plaintiffs' plans contain majority-black districts with much the same racial makeup as the challenged plans. The following chart compares the percentage black population in each district in the challenged plan to the population in the same district (or similar geographical area) in each of the plaintiffs' proposed plans<sup>2</sup>:

---

<sup>2</sup> The chart reproduced here in the body of the brief lists only the challenged black-majority districts. Ex. 1, attached hereto, is the same chart but listing all districts in the House and Senate. It was made using exhibits SDX403, C45, C42, C46, and APSX36 for the House; and exhibits SDX400, C47, C48, and APSX27 for the Senate.



**Comparison of Plaintiffs' Plans with Challenged Plans**

House District	DX 403 Plan as Passed	C45 McClammy Plan	C42 Buskey Reap. 4 (ADC Plan)	C46 Knight Plan	APSX36 New ALBC Plan
19	61.25	67.07	67.01	75.39	58.27
32	60.05	58.40	56.68		52.35
52	60.13	62.27	61.34	54.07	57.42
53	55.83	62.00	56.61	55.86	41.60
54	56.83	31.46	31.40	58.72	61.06
55	73.55	62.92	66.66	64.03	59.44
56	62.14	61.06	58.16	54.02	61.13
57	68.47	62.27	61.89	60.27	66.10
58	72.76	66.20	76.98	61.09	62.60
59	76.72	66.62	64.85	61.27	60.01
60	67.68	62.26	65.38	59.55	56.90
67	69.15	69.21	68.63	69.43	69.43
68	64.56	53.87	55.19		53.30
69	64.21	57.56	56.92	57.62	50.61
70	62.03	61.18	61.66	57.21	57.21
71	66.90	60.42	59.43	54.45	63.82
72	64.60	60.37	55.37	56.25	62.65
76	73.79	75.62	64.36		63.79
77	67.04	67.34	62.31	59.38	65.61
78	69.99	73.03	74.21	58.70	66.92
82	62.14	61.14	57.22	53.63	66.46
83	57.52	61.87	55.99		38.58
84	52.35	51.40	52.00		55.17
85	50.08	47.96	53.94	54.21	49.21
97	60.66	63.00	63.59	57.19	57.19
98	60.02	60.22	61.57	63.75	60.45
99	65.61	62.92	63.55	57.98	58.50
103	65.06	62.08	63.03	17.92	63.16

Senate District by % Black Population	DX 400 Plan as Passed	C47 Sanders Plan	C48 Buskey Reap. Plan (ADC Plan)	APSX27 New ALBC Plan
18	59.10	58.49	61.32	59.80
19	65.31	65.30	62.89	66.55
20	63.15	62.82	65.10	63.68
23	64.84	57.75	61.23	54.19
24	63.22	56.90	60.43	60.42
26	75.13	71.28	68.44	56.91
28	59.83	51.55	60.38	50.24
33	71.64	71.83	65.83	62.83

Without a competing plan that observes the drafters’ race-neutral criteria, the plaintiffs cannot prove “that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles” and “that those districting alternatives would have brought about significantly greater racial balance.” *Easley*, 532 U.S. at 258. Even their deficient plans show that many of the majority-black districts will be the same no matter who draws them. The plaintiffs’ failure to propose any plan *with respect to any district* that meets “background” principles that must be “taken as a given” or the drafters’ “legitimate political objectives” is enough, by itself, to reject their claims as to any and all of the majority-black districts.

**B. The Legislature’s decision to adopt a maximum population deviation of  $\pm 1\%$  was a permissible, race-neutral, “background” decision, not evidence of a racial gerrymander.**

Instead of accepting the drafters’ race-neutral criteria “as a given,” the plaintiffs spend much of their briefs challenging those criteria. As this Court has already recognized, the reason the plaintiffs have never proposed a comparable plan is self-evident: they reject the drafters’ race-neutral districting criteria because these criteria undermine their partisan interests. The drafters’ plans preserve the 2010 Republican supermajority and eliminate the lingering Democratic “partisan gerrymander that existed in the former districts.” (Doc. 203 at 134). The plaintiffs’ plans reject the preexisting district lines and use a more malleable 10% deviation to help elect the maximum number of Democrats or achieve other political objectives (such as minimizing county and precinct splits).

Regardless of how the plaintiffs couch their argument, the degree to which the Legislature sought to achieve population parity is not something that the plaintiffs can challenge as part of a racial gerrymandering claim. There are at least three reasons why the plaintiffs’ arguments about the  $\pm 1\%$  deviation do not help them establish racial gerrymandering.

First, federal law supports a tighter population deviation or, at the very least, is agnostic. At times the plaintiffs have implied that it is a violation of federal law to have too *little* deviation. That was the basis of the ALBC’s original one-person, one-vote claim (dismissed in Doc. 53). Federal law, however, precludes too *much* deviation, not too little. *See Reynolds v. Sims*, 377 U.S. 533, 568 (1984) (applying the one-person, one-vote principle to State legislative districting plans). It sets a

ceiling, not a floor, on the amount of permissible population disparity. The same Constitution that requires zero disparity among Congressional districts, *see Kirkpatrick v. Preisler*, 394 U.S. 526, 530–31 (1969), cannot simultaneously condemn a State that wishes to approach that standard for its Legislature. If federal law is relevant at all, it puts a thumb on the scale in favor of greater equality. *See Larios v. Cox*, 300 F. Supp. 2d 1320, 1341 (N.D. Ga. 2004), *aff'd*, 542 U.S. 947 (2004).<sup>3</sup>

It is true, as the Supreme Court said in this case, that a  $\pm 1\%$  population deviation is “a more rigorous deviation standard than our precedents have found necessary under the Constitution.” *ALBC*, 135 S. Ct. at 1263. But to say that the Constitution does not *require* the narrower standard is a far cry from saying that the Constitution *prohibits* it. And to say that the Supreme Court has not *yet* required a tighter deviation does not mean that it will not in the future. In fact, the Supreme Court recently noted probable jurisdiction to address whether the Constitution *prohibits* what the plaintiffs suggest the Constitution *requires*: using a 10% population deviation to help Democrats get elected. *See Order Noting Probable Jurisdiction, Harris v. Arizona Independent Redistricting Commission*, No. 14-232 (Jun. 30, 2015) (whether “the desire to gain partisan advantage for one political party justifies intentionally creating over-populated legislative districts”).

---

<sup>3</sup> As Justice Stevens wrote in a concurring opinion, “[A]ppellant invites us to weaken the one-person, one-vote standard by creating a safe harbor for population deviations of less than 10 percent, within which districting decisions could be made for any reason whatsoever. The Court properly rejects that invitation.” *Cox v. Larios*, 542 U.S. 947, 949 (2004).

Second, to the extent the plaintiffs imply that there was an improper motive for wishing to come closer to the one-person, one-vote standard than prior Legislatures, the record does not support such a conclusion. Sen. Dial and Rep. McClendon<sup>4</sup> testified that the Legislature adopted  $\pm 1\%$  because they believed it was good public policy, not for some discriminatory purpose.<sup>5</sup> This Court has already credited that testimony and found that a purpose of the tighter deviation standard was to remedy the population disparities that made the 2001 plan so controversial. (Doc. 203 at 4, 133–134). By adopting a tighter deviation standard, the Legislature “reduced, from the outset, its ability to pack voters for any discriminatory purpose, whether partisan or racial.” (*Id.* at 133). There is nothing insidious about Alabama deciding to join Florida, Georgia, California, Illinois, Iowa, Minnesota, Nevada, Utah, Washington, Wisconsin, Indiana, Oklahoma, and Virginia: States that recently adopted an overall deviation of 2 percent or less for at least one of their legislative houses. (APX 76).

---

<sup>4</sup> While Rep. McClendon is now a senator, we refer to him as a representative because he was a representative at the time he testified and when the plans were drawn.

<sup>5</sup> Rep. McClendon’s testimony on that point is as follows:

Well, [the  $\pm 1\%$  rule] just makes good sense to me. If you're interested in one-person, one-vote, that's a lot closer than 5 percent, or actually, plus or minus 5, which gives you 10 percent deviation. You know, we had already gone through this with the congressional, which has zero percent, and state board of education with 1 percent. And we went right through with DOJ preclearance, so I didn't have a problem at all with 1 percent. It made sense to me.

(Tr. 3.220-21)

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

A. Absolutely not.

(Tr. 3.234-35)

Third, the plaintiffs appear to suggest that *state* law precludes a  $\pm 1\%$  rule, even if federal law does not. The plaintiffs' argument is that the Legislature is required to use the maximum permissible deviation allowed by federal law to comply as much as possible with the whole-county provision of the Alabama Constitution. There are at least three problems with this failure-to-follow-state-law argument: (1) Federal courts lack jurisdiction to compel state officials to follow state law. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984). (2) It is undisputed that some counties must be split in any statewide redistricting plan, regardless of deviation. (3) There is no clear "maximum permissible" deviation under federal law, as discussed above. But if this Court believes it is important to determine whether state law affects the choice to use a  $\pm 1\%$  population deviation, then that is a question that it can certify to the Supreme Court of Alabama. Contemporaneously with this brief, we have filed a motion to certify that question.

Ultimately, whether federal or state law compels a  $\pm 1\%$  deviation is irrelevant. The Supreme Court held in this case that "an equal population goal . . . 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." *ALBC*, 135 S. Ct. at 1270 (emphasis omitted). The plaintiffs cannot challenge the  $\pm 1\%$  deviation as part of a racial gerrymandering claim.

**C. County splitting, in general, is not evidence of a racial gerrymander.**

In the same way that the population deviation does not help establish racial gerrymandering, the plaintiffs' discussion of county splitting does not show racial gerrymandering, either. In our district-specific section below, we address county splits as they relate to individual districts. Here we note only that keeping counties whole has little to do with racial gerrymandering because it was only one of many race-neutral districting criteria that the Legislature adopted. (*See* SDX 420).

From its inception, this case has been more about county-splitting than race, particularly for the ALBC. The ALBC's county-splitting claim has evolved, and each incarnation has been properly dismissed.<sup>6</sup> Now, in their post-remand version of the claim, they seek to graft their county-splitting arguments onto a racial gerrymandering claim. For the first time, the ADC has joined in. In the plaintiffs' view, county-splitting is *per se* evidence of a racial gerrymander because the whole-county provisions of the Alabama Constitution are the "most important" redistricting principle in Alabama. (Doc. 256 at 7, 12, 15, 72, 107, 109; *see also* Doc. 258 at 19, 33, 72.) But the plaintiffs cannot prove racial gerrymandering by reference to county-splitting alone. This is so for three reasons.

---

<sup>6</sup> At first, the ALBC asserted a one-person, one-vote claim arguing that the Legislature sought *too much* parity among the Districts. That claim was dismissed. (Doc. 53). Next the ALBC asserted a one-person, one-vote claim with respect to local delegations in the Legislature. They argued that too many counties were split, thereby changing the makeup of county delegations. Everyone acknowledged that any legal redistricting plan would split *some* counties; the ALBC argued that the Legislature split more counties than *necessary*. This Court correctly dismissed the plaintiffs' claim. (Doc. 174). The Court's decisions on this issue represent the "law of the case." *See Arizona v. California*, 460 U.S. 605, 618 (1983). The Supreme Court's remand did nothing to upset these rulings, and this Court has already declined to revisit them. (Doc. 242).

First, counties are split for many reasons, and it is undisputed that counties *must* be split to comply with the one-person, one-vote requirement of federal law. As an examination of the maps in the record makes clear (and as set out more succinctly in Doc. 76-3), counties were split in the 1993, 2001, and current plan: In 1993, the Legislature split 36 counties in the House and 32 in the Senate; in 2001, the Legislature split 39 counties in the House and 31 in the Senate; and in 2012, the Legislature split 50 counties in the House and 33 in the Senate. The increased number of splits in the current plan is driven by the tighter population deviation, not race. The ALBC's expert, William S. Cooper, opined that the "+/-1% deviation rule employed by the Alabama Legislature makes it much more difficult to preserve county integrity when drawing plans" (APX 69 at 4). That some counties are split somewhere is irrelevant to determining whether the lines of a specific district were driven by race-related objectives in derogation of other districting principles.

Second, it is up to the Legislature—not the plaintiffs or this Court—to identify the “most important” redistricting criterion. The Alabama Constitution provides that Senate districts may not cross county lines, but it also provides that they be “as nearly equal to each other in the number of inhabitants as may be.” ALA. CONST. art. IX, §200. “[A] state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality.” *Connor v. Finch*, 431 U.S. 407, 414–415 (1977). “The federal courts by contrast possess no distinctive mandate to compromise sometimes conflicting state apportionment



policies in the people’s name.” *Id.* at 415. Accordingly, state-law questions about the whole-county provisions of the Alabama Constitution are irrelevant. But if these state-law questions are relevant to this Court’s consideration of the racial gerrymandering claim, then this Court should certify them to the Supreme Court of Alabama.<sup>7</sup> Contemporaneously with this brief, we have filed a motion to certify.

Third, even if the plaintiffs were right about state law, this Court lacks jurisdiction to compel the State to follow the plaintiffs’ view of state law. *See Pennhurst State Sch. & Hosp.*, 465 U.S. at 100. The evidence shows that the drafters here clearly prized other race-neutral objectives in the House above keeping counties whole, such as preserving incumbents and the core of districts. For example, it is undisputed that counties were split in the challenged plan to comply with requests of incumbent legislators. (Tr. 3.135–36). Sometimes counties were split because they were split similarly in prior plans. (APX 75 at 34). And, as Hinaman noted, county lines do not necessarily constitute a “community of interest,” which was a separate race-neutral principle that the Legislature adopted. (Tr. 3.209–211). The plaintiffs cannot meet their burden of proof in a racial gerrymandering claim by pointing to the fact that counties, as a general matter, were split.

---

<sup>7</sup> It is unclear what remains, if anything, of the Alabama Constitution’s “whole county” provisions after those exact provisions were held unconstitutional by the Supreme Court in *Reynolds v. Sims*. *See, e.g., Rice v. English*, 835 So. 2d 157, 159-60 (Ala. 2002) (declining to address county-splitting claim under the Alabama Constitution).

**D. The percentage of black population of each district does not establish a racial gerrymander.**

Most of the plaintiffs' arguments concern the percentage of black persons in each majority-black district. The plaintiffs point to testimony concerning the Legislature's goal of not "retrogressing" the minority districts, or keeping the minority percentages roughly the same as they were at the time of redistricting. The plaintiffs characterize this goal as having had a "mechanical" application and argue that it taints all challenged districts, as if the goal alone were a sufficient ground to find in their favor on all minority districts.

These are precisely the same statewide gerrymandering arguments that the plaintiffs made in the Supreme Court, and that the Court rejected by remanding for a fact-intensive review of specific districts. The Supreme Court remanded this case because the United States convinced it that the mere fact that the drafters had a race-based goal was not enough to establish a racial gerrymander. Instead, district-specific evidence was necessary because "some majority-black districts deviated significantly from the goal of maintaining the same percentage of black residents" and in other "districts the percentage of black residents may have remained relatively constant based on boundaries drawn in a manner consistent with traditional districting principles." Brief for the United States as Amicus Curiae Supporting Neither Party at 20-21, *ALBC v. Alabama*, 135 S. Ct. 1257 (2015) (No. 13-895). Similarly, the dissenting judge on this Court expressly rejected the notion that the "the plaintiffs should prevail as to all the districts." (Doc. 204 at 58).

The plaintiffs' arguments about the racial composition of the majority-black districts fail to help meet their burden to establish racial predominance for two overarching reasons.

**1. As a factual matter, the percentage target was not applied “mechanically” in derogation of other redistricting criteria.**

As a factual matter, the record shows that the drafters' race-related goals were not “mechanical” or mechanically applied. There is no question that the drafters' goal was to “stay as close to the 2001 numbers as possible.” (APX 75 at 24). But the redistricting expert, Randy Hinaman, testified that he was not concerned about just *any* deviation in the minority percentages, no matter how small, but about *large* deviations.<sup>8</sup> And it is simply not true that Hinaman was single-mindedly looking for black persons to add to minority districts, discarding

---

<sup>8</sup> Hinaman testified: “I thought if we had *large* deviations from previous percentages that that would potentially create preclearance problems with the Department of Justice.” (APX 75 at 25) (emphasis added). He said, “I was concerned about anyplace where we lowered the black percentage *significantly* that there could be a preclearance issue.” (APX 75 at 101) (emphasis added). Major deviations—something that would lower the district to where there was a question of ability to elect—were his concern:

Q How would you determine whether the black percentage had been lowered significantly?

A Well, obviously it's somewhat of a subjective thing, but again, if you took a district that was somewhere in the 60 to 65 percent black majority district and you brought it down into the low 50s, I think people would be concerned whether that population would then have the opportunity to elect a candidate of their choice.

(APX 75 at 102). As he summarized it at trial:

And then looking at 2010 census as applied to 2001 lines, whatever that number was. I tried to be as close to that as possible. And if I was *significantly* below that, I was concerned about that being retrogression that would be looked upon unfavorably by the Justice Department under Section 5.

(Tr. 3.145) (emphasis added).

traditional redistricting principles along the way. Instead, Hinaman testified that he added people based on non-racial criteria and only then looked at the “overall number and whether I was retrogressing the total black population in those districts.” (Tr. 3.182).

Obviously Hinaman was aware of the racial composition of precincts as he was adding them. (Tr. 3.143). But he would add precincts—majority-white, majority-black, whatever was available—and only *then* observe what the additions did to the minority percentages:

My point is I would look at the changes I made *in toto* to see what it did to the overall black percentage of the district, and the fact that I may have added a white precinct along the way did not trouble me in any way. It was the overall number.

(Tr. 3.145). This meant that, “in some districts I could add in anything I want, and it didn’t matter because they were—you know, either they didn’t need that much population, or the changes I added didn’t matter.” (Tr. 3.143). Hinaman explained to the plaintiffs’ lawyer that he would check his race-neutral additions to make sure they met his race-based criteria, not the other way around:

I mean, I tried to look at the additions en masse, not just a precinct. I may add a white precinct, a majority white precinct and a majority African American precinct; but if you look at the end number, it did not retrogress the overall end number for that precinct, then they were added in.

(Tr. 3.143–44).

Non-racial criteria obviously affected the additions and subtractions for pre-existing majority-black districts. Attached to this brief as Ex. 2 is a chart listing

each district in the House and Senate, its percentage of black persons in the 2001 plan (using 2010 Census data) and its percentage of black persons in the 2012 plan. Some of the minority districts were close, and for some the percentage went up or down less than a percentage point. But, for example, HD19 dropped 8.57 points. HD58 dropped 5.1 points. HD68 went up two points. HD71 went up 2.62 points. HD72 went up 4.4 points. HD77 dropped 6.48 points. HD78 dropped 4.27 points. HD82 went up 5 points. HD99 dropped 7.74 points. (*See* Ex. 2) (citing SDX 403 and 406)). The same is true in the Senate, where some districts remained close to their old racial composition, some went up, and one (SD20) went down by more than 14 percentage points. (Ex. 2) (citing SDX 400 and 402)).

There is no question that the drafters “tried where possible to not lower the total population of African American population in those minority majority districts.” (Tr. 3.119). But the Supreme Court described the goal as one to “maintain *roughly* the same black population percentage in existing majority-minority districts.” *ALBC*, 135 S. Ct. at 1263 (emphasis added). This Court heard the testimony and can weigh it. The testimony and other evidence shows that the drafters’ goal was not “mechanically” applied at the expense of traditional redistricting principles throughout the plans.

**2. The percentage of black population in a district can just as well be explained by race-neutral criteria.**

The main legal problem with the plaintiffs’ reliance on the black population of districts is that the drafters’ race-related goal of keeping the majority-black districts the same is coextensive with their race-neutral goals of (1) consistency

between old and new districts, (2) core preservation, (3) incumbency protection, and (4) preserving communities of interest. Decisions that are consistent with the drafters' race-related goal of preserving roughly the same percentage of black voters in a preexisting majority-black district will almost always be consistent with these race neutral goals as well. Where race-neutral goals and race-related goals do not conflict, it is impossible to "subordinate" traditional districting principles to race because both race and traditional principles lead to the same outcome. There is no conflict between the goals such that one must be "subordinated" to another.

This Court has already held that the similarities between the old and new districts are mostly explained by demographic reality, not the elevation of racial considerations. Because "[v]oters are not fungible commodities that can be moved anywhere in a state," the Court explained that the majority-black districts mostly reflect "racial groups tied to particular geographical locations." (Doc. 203 at 134). Following the lines of preexisting districts was a priority for the drafters, and they were limited in their choice of who to add or remove from a district to the voters who resided at the edge of each district. "[M]ore than 90 percent of the total black population remained in the same kind of district where they had resided earlier." (Doc. 203 at 139). And, in some geographical areas—such as the Black Belt and Birmingham—one would have to racially gerrymander to *change* the population of a majority-black district. Because the population of Alabama did not change between the old districts at the time of the 2010 Census and the new districts in 2012, we should not expect the population of individual districts to change either.

As a general matter, the best explanation for consistency between the old and new districts is (1) the drafters' decision to change each district as little as possible and (2) the demographics of Alabama. Although there are majority-black districts where the racial composition changed very little, there are also many majority-*white* districts where the racial percentages changed very little. *See, e.g.*, SD29 (difference of .02%), SD3 (.12%), HD23 (0.0%), and HD87 (.07%). (Ex. 2). In 28 majority-white House districts and 7 majority-white Senate districts, the percentage of black persons remained within 1% of where it was in the previous plan (using 2010 Census data). (Ex. 2). But there was no race-based goal for those majority-white districts. Drawing districts using the drafters' race-neutral redistricting principles, without a goal of keeping the minority percentages roughly the same, will still result in districts where there is very little change in the racial composition of the electorate.

In short, the Legislature's goal of keeping the minority percentages roughly the same does not taint all districts. It does not prove that the Legislature ignored traditional redistricting principles in any particular district. It does not help establish that the Legislature put a significant number of people in any district on account of their race. By acknowledging their goal to comply with the Voting Rights Act, the drafters conceded that they considered race in some way with respect to some districts. But the existence of that goal does not help the Court determine in which districts that occurred or whether race predominated over other criteria in any particular district.

**E. Precinct splitting is not evidence of a racial gerrymander.**

For each district that the plaintiffs challenge, they argue that racial predominance is shown by the fact that the Legislature split precincts and that it allegedly did so along racial lines. But precinct splitting, without context, is not evidence that race predominated in the drawing of districts. The Court should keep three points in mind as it evaluates the precinct-split evidence with respect to each individual district.

**1. There are good reasons to split precincts that have nothing to do with race.**

First, there are many good reasons to split precincts that have nothing to do with race. The ALBC plaintiffs' expert, William S. Cooper, opined that "the +/-1% deviation rule makes it difficult to avoid precinct splits." (Cooper Expert Report, APX 69, p. 6). Cooper also noted that that sometimes precincts split municipal boundaries, so a precinct split may be necessary to avoid a different kind of split. (*Id.* at ¶16, n.4). Moreover, as Hinaman noted, "precinct lines don't necessarily follow roads and boundaries" or natural community dividing lines. (Tr. 3.184). Precinct splits may therefore be required to maintain a community of interest. Creating a new district in an area, accommodating the requests of legislators, maintaining the appropriate population deviation, preserving the lines of prior plans (including where they split precincts), are all reasons that a particular precinct may have been split. (APX 75 at 34, 118–119). Precinct splits are not necessarily inconsistent with race-neutral districting principles.



The plaintiffs have not identified any way in which any particular precinct split is contrary to traditional redistricting criteria. They present dozens of color-coded map excerpts that show portions of precincts out of context. They use these maps to argue that precincts were split on the basis of race. Their argument seems to be that the Legislature should not have chosen certain heavily black Census blocks for minority districts, but they have not produced a compliant alternative map to show us which blocks the Legislature should have chosen instead. And, more importantly, they have not told us what traditional districting principle makes those unidentified blocks a better choice. Is it simply because the other Census blocks are whiter? That would not meet plaintiffs' burden; that would be racial sorting of the precise nature that they accuse the Legislature of committing. Because the plaintiffs have not asserted (much less proven) that a traditional principle made the chosen blocks a poorer choice, and because they have not shown that other blocks could be chosen to produce a map that satisfies  $\pm 1\%$ , their indecipherable precinct map excerpts should be given no weight.

**2. There is no pattern that raises an inference that race is the reason for precinct splits as a general matter.**

Moreover, the precinct splits in the current plans occur with no pattern that would raise an inference about *why* a precinct was split. Plaintiffs' expert acknowledged at trial that the 2001 plan had a similar number of precinct splits as the current plan. (Doc. 203 at 82, 71–72). In the 2012 plan, precincts were split not just on the edges of black majority districts, but were also split between white majority districts and virtually all districts around the State. (SDX 405, 475; NPX

357). As this Court has already held, “precinct splits occurred throughout the State,” (Doc. 203 at 143), and they occurred “with no discernible pattern.” (Doc. 203 at 144).

That holding was obviously correct. SDX 405 lists the precinct splits for the 2012 House plan, and SDX 475 does the same for the Senate plan. There are precinct splits in *every* district in both plans. The 2001 House plan (SDX 413) and 2001 Senate plan (SDX 409) have plenty of splits, too. Only 8 districts in the 2001 plan have zero splits, and they are majority-white districts (HD3, HD7, HD17, HD18, HD34, HD81, HD90, and HD91). That is, the 2001 plan split precincts in every single black-majority district. The fact that precincts were split proves nothing.

The plaintiffs complain that when some precincts were split between majority-black districts and majority-white districts, the portion that went into the majority-black district had a greater percentage of black voters than the portion that went into the majority-white district. It is not surprising, though, considering the residential patterns in these areas, that a precinct on the border of majority-white and majority-black areas would reflect those patterns. If, for example, there is a majority-white district to the north of, and contiguous to, a majority-black district to the south, a precinct on the border of those districts may naturally have a greater concentration of white persons in the northern half of that precinct (which borders the majority-white district) and a greater concentration of black persons in the southern half (which borders the majority-black district). If that precinct is split in

order for both districts to fall within 1% of the ideal population, the Legislature cannot skip Census blocks to put the northern half of the precinct in the majority black district. Each district will necessarily get the portion of the precinct contiguous to the district, and it will inherit the corresponding racial patterns. It is logical to expect a higher proportion of black voters to be placed in the majority-black district in many cases, based entirely on race-neutral criteria.

In any event, the splits do not reveal the “pattern” that the plaintiffs suggest. Some precinct splits do place a higher percentage of blacks in a majority-black district, and a higher percentage of whites in a majority-white district, but that is hardly true across the board. In many cases, the difference is insignificant. In HD19, for example—a challenged House district in Madison County that borders a majority white district HD6—the Legislature split the “Harvest Bapt Ch” precinct between HD19 and HD6. Plaintiffs discuss the split on page 34 of Doc. 256, citing to SDX 405. The Legislature put more whites (2,093) than blacks (1,292) into the majority-black district HD19. The part placed in majority-black district HD19 was 35.5% black, and it had a very similar makeup to the part placed in majority-white district HD6, which was 31.2% black. The same is true for the “Second Mount Zion Ch” precinct, where a portion that is 72.9% black was placed in majority-black HD68, and a portion that is 71.4% black was placed in majority-white HD90. (Doc. 256 at 79). These are not the kind of stark differences that reveal a “pattern” of “racial fine-tuning.”<sup>9</sup>

---

<sup>9</sup> See also “University Mall” precinct, split between HD70 (receiving a portion that is 32.6% black) and HD62 (receiving a portion that is 31.8% black). (Doc. 256 at 95). The “Aliceville 2 Nat’l Guard

And in other splits, the portion placed in the majority-white district had a *higher* percentage of blacks than the portion placed in the majority-black district. For example, in the “Westlawn Mid Sch” precinct split between HD53 and HD6, the drafters put a portion that was 24.5% black in the majority-white district and a portion that was 18.6% black in the majority-black district. (Doc. 256 at 38–39). Likewise for the “Birmingham Botanical” precinct split between HD52 and HD46 (Doc. 256 at 47); “the Canaan Bapt Ch” precinct split between majority-black HD56 (which received an area that is 12.6% black) and majority-white HD15 (which received an area that is 21.3% black) (Doc. 256 at 58); the “Nazarene Bapt Ch” precinct, split between majority-black HD68 (68.7% black) and majority-white HD90 (88.7% black); (Doc. 256 at 75); the “Rangeline” precinct split between majority-black HD71 (6.3% black) and majority-white HD65 (22.6% black) (Doc. 256 at 96); the “Austin Sumbry Park” precinct, split between majority-black HD83 (34.4% black) and majority-white HD80 (38.4% black) (Doc. 256 at 119–120); and the “Birmingham Botanical Gardens” precinct, split between majority-black SD18 (0% black) and majority-white SD15 (1.2% black) (Doc. 256 at 144–145). The drafters could have increased the black population of these majority-black districts by keeping these precincts whole, but they split them instead.

### **3. Unsplitting precincts shows that precinct splits have a negligible effect on a district’s racial composition.**

Finally, precinct splits do not help the plaintiffs prove racial gerrymandering because they do not address the placement of a “significant number” of voters. In

---

Armory” precinct was split between majority-black HD71 (receiving a portion that is 81.9% black) and majority-white HD61 (receiving a portion that is 78.0% black). (Doc. 256 at 100).

fact, there would be only slight changes to the racial composition of the districts if the precincts were kept whole. To show what would happen if precincts were unsplit in the majority-black districts, we have reverse-engineered the population of individual districts by eliminating precinct splits. Except for districts HD55, HD67, HD76, and HD82 (marked by asterisks), we found a combination that met the  $\pm 1\%$  population deviation *for that particular district* without regard to the population of its neighbors. The following chart shows what happens to the black percentage of each majority-black district when all precinct splits are eliminated in each individual district:

	<u>Existing</u> %	<u>Revised</u> %	<u>Net</u>
SD18	59.1	59.4	0.3
SD19	65.3	64.8	-0.5
SD20	63.1	61.9	-1.2
SD23	64.8	63.6	-1.2
SD24	63.2	62.4	-0.8
SD26	75.1	73.1	-2.0
SD28	59.8	54.8	-5.0
SD33	71.6	70.8	-0.8
HD19	61.2	59.9	-1.3
HD32	60.0	53.4	-6.6
HD52	60.1	64.5	4.4
HD53	55.8	55.9	0.1
HD54	56.8	62.4	5.6
HD55*	73.6	73.5	-0.1
HD56	62.1	61.3	-0.8
HD57	68.5	66.6	-1.9
HD58	72.8	71.3	-1.5
HD59	76.7	77.6	0.9
HD60	67.7	72.5	4.8

	<u>Existing</u> %	<u>Revised</u> %	<u>Net</u>
HD67*	69.1	68.9	-0.2
HD68	64.6	57.9	-6.7
HD69	64.2	66.7	2.5
HD70	62.0	63.1	1.1
HD71	66.9	67.5	0.6
HD72	64.6	62.6	-2.1
HD76*	73.8	79.0	5.2
HD77	67.0	67.9	0.9
HD78	69.9	69.0	-0.9
HD82*	62.1	63.9	1.8
HD83	57.5	49.8	-7.7
HD84	52.3	52.3	0.0
HD85	50.1	35.8	-14.3
HD97	60.7	64.8	4.1
HD98	60.0	64.9	4.9
HD99	65.6	69.0	3.4
HD103	65.1	68.3	3.2
AVG			-0.42

(SDX 401, 403, 405, 475; APSX 44). This chart is also reproduced in Ex. 3 to this brief.

We arrived at these percentages by (1) identifying the split precincts that affect the district in SDX 405, which lists the precinct and the race of persons on each side of the split, (2) eliminating the splits by putting the whole population of the precinct in one or the other of the districts that currently splits it, and (3) calculating how our changes affected the total population of the district and the racial composition of the district. Ex. 3 to this brief is a collection of detailed spreadsheets, one for each challenged majority-black district, demonstrating how we put the split precincts back together for that particular district. We used SDX 401 to obtain population figures for the districts as they presently exist, SDX 475 to obtain the racial population of portions of precincts in order to know what to add and subtract from existing population totals, and APSX 44 to identify which precincts were split and which other districts received a portion of the precinct.<sup>10</sup> If we placed the entirety of the precinct into the district in question, then we *added* population and indicated that with a plus sign (+).<sup>11</sup> If we removed the entirety of the split precinct from the district in question, then we *subtracted* population and indicated that with a minus sign (-).<sup>12</sup>

---

<sup>10</sup> SDX 403 and 475 provide the same information for the Senate districts.

<sup>11</sup> For example, the “Ctr Street Mid Sch” precinct is split between HD55 and HD52. (SDX 405 at 554). The portion of the precinct that was placed in HD55 has 48 whites, 2,432 blacks, and 67 “other.” To unsplit the precinct by putting the whole “Ctr Street Mid Sch” precinct entirely within HD52, we *add* 48 whites, 2,432 blacks, and 67 “other” to the numbers for existing HD52.

<sup>12</sup> For example, the portion of the “Birmingham Botanical” precinct in HD52 has 380 whites, 4 blacks, and 5 “other.” (SDX 405 at 549). To put the precinct back together, we assume that the Legislature took that precinct entirely out of HD52 and put it in a neighboring district instead. So we subtract 380 whites, 4 blacks, and 5 “other” from the population numbers of existing HD52.

These demonstrations can only show so much, of course. They show what happens only to a single district when precincts are put back together. They do not show what happens to surrounding districts. They do not show whether those are thrown outside  $\pm 1\%$  deviation or change their own racial composition. They also do not show whether keeping the precincts whole draws an incumbent out of a district or changes the boundaries of the preexisting district from the previous plan. And we do not claim that our way of unsplitting the precincts is the only combination of subtractions and additions that would keep the precincts whole and the districts within deviation. We note, though, that for four districts, HD55, HD67, HD76, and HD82, we could not find *any* combination of additions and subtractions that would keep the district within the population deviation.

If the Legislature had used precinct splits to raise the percentage of blacks in the black-majority districts, as the plaintiffs claim, one would expect to see all negative numbers in the “net” column, but in roughly half (17 districts out of 36) the black percentage goes *up* if the precincts are kept whole. Also, if the Legislature had used precinct splits as the plaintiffs claim, one would expect the differences to be more significant, but there are only 7 districts where keeping the precincts whole reduces the black percentage by 2% or more (and two of those would not even be black-majority districts without the precinct splits). The average difference for all House and Senate districts is only -0.42%. If we disregard HD83 and HD85, where precinct splits appear necessary to create majority-black districts, the average

difference is a *positive* .39%, meaning that, on average, keeping the precincts whole results in districts with a *higher* percentage of blacks.

The plaintiffs cannot prove that race predominated in drawing districts simply by pointing to the fact that the Legislature split precincts. As Dr. Joe Reed said at trial, in any plan, “there are going to be some precincts split. There are going to be some split, however you do it.” (Tr. 2.175). In an attempt to meet their burden, the plaintiffs point to the fact that *some* precinct splits placed a higher proportion of black voters in a challenged district, but that does not tell the whole story. Some splits did the opposite, and putting the precincts back together shows that the splits could not have been used to put a “significant number” of people within or without a district on account of their race.



### ARGUMENT: STRICT SCRUTINY

If the plaintiffs can establish that the drafters subordinated race-neutral criteria to race-related criteria with respect to a specific district, then this Court should apply strict scrutiny to the lines of that district. The strict scrutiny inquiry has two parts. First, the State must show that it sought to achieve a compelling government interest—i.e., that the interest was important. Second, the State must show that its consideration of race was narrowly tailored—i.e., that it could not have achieved the compelling interest in another, less problematic way. We meet both elements as a general matter, and we apply these elements to the individual districts subject to challenge in the district specific discussion below.

#### **I. The State has a compelling interest in complying with Section 2 and Section 5 of the Voting Rights Act.**

The drafters considered race to comply with Section 2 and Section 5 of the Voting Rights Act. As this Court has already recognized, the State has a compelling interest in complying with the Voting Rights Act. (Doc. 203 at 160).

There appears to be no dispute that compliance with Section 5 is a compelling interest. The plaintiffs have dropped their argument that Alabama's plans cannot be supported by Section 5 because it no longer applies after the Supreme Court invalidated Section 4's coverage formula in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). There is also no dispute that Section 5 required the State to maintain at least the same *number* of majority-black districts under the 2012 plan as under the 2001 plan and that Section 5 required the State to consider race in order to ensure that there were enough black voters in majority-black districts to allow black voters

to elect their candidates of choice in those districts. (Doc. 256 at 3). As the Supreme Court explained, Section 5 requires that “minority voters retain the ability to elect their preferred candidates.” *ALBC*, 135 S. Ct. at 1273. And, finally, there is no dispute that Section 5 required the State to prove that its plans were *not* motivated by a discriminatory purpose, broadly defined. *See* 42 U.S.C. § 1973c(c) (forbidding “any discriminatory purpose,” not merely a retrogressive purpose).

Section 2 indisputably imposed many of the same requirements that Section 5 imposed. *See* 52 U.S.C. § 10301. In the context of redistricting, both Section 5 and Section 2 require States to consider race in order to determine whether district lines diminish minority voters’ ability to elect candidates of their choice. When a minority group “is sufficiently large and geographically compact to constitute a majority in a single-member district,” the failure to preserve that majority within a single district may leave the State vulnerable to vote dilution claims. *Thornburg v. Gingles*, 478 U.S. 30, 49 & n.16 (1986). Under both Section 2 and Section 5, Alabama was required to maintain the ability of minority voters to elect their preferred candidates. *ALBC*, 135 S. Ct. at 1273.

For their part, the plaintiffs approach the compelling interest prong differently. The *ALBC* concedes that the State had a compelling interest in complying with the Voting Rights Act, disputing only whether Alabama’s actions were narrowly tailored to meet that interest. (*See* Doc. 256 at 23). The ADC, on the other hand, sidesteps the question of whether Section 5 compliance can be a compelling interest. They argue instead that the State cannot have a compelling

interest in Section 5 compliance because it misunderstood what Section 5 required. (See Doc. 258 at 90–93).

The ADC’s argument is wrong for two reasons. First, the ADC’s argument is inconsistent with Supreme Court precedent. In *Shaw v. Reno*, 509 U.S. 630 (1993) and *Bush v. Vera*, 517 U.S. 952 (1996), which created the racial gerrymandering cause of action, the Court addressed the State’s understanding of Section 5’s requirements under the “narrow tailoring” prong, not the compelling interest prong. Similarly, in this case, the Supreme Court held that “the District Court and the legislature asked the wrong question *with respect to narrow tailoring*.” *ALBC*, 135 S. Ct. at 1274. There was never any suggestion that, if a legislator misinterprets the statutes, the State has no compelling interest in complying with them. In short, the ADC’s argument is about narrow tailoring, not compelling interest.

Second, the ADC’s argument ignores the difference between the State and individual legislators. *The State* has a compelling interest in complying with the actual requirements of federal law, regardless of what *individual legislators* subjectively believed federal law to require. Here, it is undisputed that Section 5 required the State to (1) maintain the same number of majority-black districts in the new plan as in the old plan, (2) ensure that the black population is high enough in those districts to preserve the ability to elect, and (3) prove that it was not motivated by a discriminatory purpose. Section 2’s requirements were similar. In fact, part of the Section 2 analysis is whether a “procedure markedly departs from [the baseline of] past practices.” S. Rep. No. 97-417 (1982), reprinted in 1982

U.S.C.C.A.N. 177. The State has a compelling interest in enacting a redistricting plan that is consistent with federal law, and that is a compelling interest no matter how individual legislators may seek to achieve it.

## **II. The State's districts are narrowly tailored.**

We have two arguments for narrow tailoring. First, on the present record, our current plans are literally the only proposed way to redistrict the State's 105 House districts and 35 Senate districts that complies with the undisputed aspects of Section 5 and Section 2. This is narrow tailoring at its narrowest. Second, and in the alternative, the districts in our plan that are approximately 65% black or less are narrowly tailored. The Legislature had substantial reason to believe that reducing majority-black districts below 65% black would violate the Voting Rights Act, regardless of whether a court would find that percentage to be strictly necessary for statutory compliance.

### **A. There is no alternative proposal to meet the undisputed requirements of the Voting Rights Act.**

As explained above, the Voting Rights Act imposes requirements that no plaintiff has ever disputed. Section 5 required that there be at least 8 majority-black districts in the Senate plan and at least 27 majority-black districts in the House. Section 5 also required that the State "preserve minority percentages" to the extent it was necessary "to maintain the minority's present ability to elect the candidate of its choice." *ALBC*, 135 S. Ct. at 1274. And Section 2 imposed very similar requirements. The only plan in the record that accomplishes these goals is the State's plan. Accordingly, this Court should find that, based on this record, our

current plans are a narrowly tailored way to comply with these undisputed requirements of Section 5 and Section 2.

For a law to fail the requirement of narrow tailoring, there must be *some* other known way of satisfying the government’s compelling interest that hews more closely to constitutional principles. For example, in *McCullen v. Coakley*, 134 S. Ct. 2518 (2014), the Court held that Massachusetts had compelling interests in erecting a “buffer zone” around abortion clinics. But the Court nonetheless held that the “buffer zone” was not narrowly tailored because “the Commonwealth has too readily forgone options that could serve its interests just as well, without substantially burdening the kind of speech in which petitioners wish to engage.” *Id.* at 2537. The Court explained that, for each compelling interest asserted, “the Commonwealth has available to it a variety of approaches that appear capable of serving its interests, without excluding individuals from areas historically open for speech and debate.” *Id.* at 2539. Because the Commonwealth had readily available alternatives to satisfy its compelling interests, the Court held that the “buffer zone” law failed the narrow tailoring element of strict scrutiny.

Similarly, when racial classifications are involved, “[n]arrow tailoring requires serious, good faith consideration of workable race-neutral alternatives.” *Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 735 (2007) (internal quotation marks omitted). But if there is no readily available race-neutral alternative way to draw a district, the existing district lines are constitutional. *See Abrams v. Johnson*, 521 U.S. 74, 88, 95–96 (1997) (evaluating a

court-ordered plan for compliance with Section 2 of the Voting Rights Act). If plaintiffs have “ample opportunity to present evidence of the need for” different district lines but fail to do so, then the government has shown that existing district lines are narrowly tailored. *Id.* at 95.

Here, there are no known alternatives to the drafters’ redistricting plans that would satisfy the State’s compelling interests. First, every one of the plaintiffs’ plans rejects the  $\pm 1\%$  deviation, which the Supreme Court held was a “background” factor to be “taken as a given.” *ALBC*, 135 S. Ct. at 1270. The plaintiffs’ plans are akin to hypothetical plans to redistrict 120 House seats (instead of 105) or 45 Senate seats (instead of 35). The standard of population deviation, the number of House and Senate seats, how the Census counts population—these are “background” factors that must be “taken as a given” when complying with Section 5 and Section 2. Because the plaintiffs’ plans universally reject “background” factors that must be “taken as a given,” they are not alternatives at all.

Second, even judged on their own terms, the plaintiffs’ plans fail to show that Alabama could have redistricted consistent with Section 5 and Section 2 in any other way. In the House, the plaintiffs’ plans reduce the number of majority-black districts by one, which is something Section 5 prohibits. The plaintiffs’ plans also fail to draw an additional majority-black district in Madison County, which is something Section 2 arguably prohibits. Many of the districts in the plaintiffs’ plans are lower than the 50–55% black threshold that their own discredited expert

attested to.<sup>13</sup> In other words, even assuming that the plaintiffs can reject the “background” factors that must be “taken as a given,” the plaintiffs are still proposing plans that violate the undisputed aspects of the Voting Rights Act with which the drafters had to comply.

Third, to the extent the plaintiffs make proposals for any specific district, they propose *race-based* classifications that do not remediate the purported constitutional problem. A consequence of narrow tailoring is that any proposed remedy “must directly address and relate to the constitutional violation itself,” “restor[ing] the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.” *Missouri v. Jenkins*, 515 U.S. 70, 87–88 (1995). But, to the extent that the plaintiffs propose any alternative for any specific district, it is a *race-based* unsplitting of precincts, designed to move white voters into majority-black districts *for no reason other than race*. For example, with respect to SD26, the ALBC plaintiffs point only to split precincts in support of their claim. (Doc. 256 at 172–176). The ADC plaintiffs discuss split precincts as well, and they propose that the State should have added rural Crenshaw County to SD26. (Doc. 258 at 33–37). But they proffer no reason other than its white majority population for adding Crenshaw County or unsplitting these precincts. (*See id.*).

---

<sup>13</sup> HD54 (31.46%), 68 (53.87%), 84 (51.40%), 85 (47.96%) in the McClammy plan (DX470, C45); HD54 (31.40%), 84 (52.00%), 85 (47.96%) in the ADC plan (C42); HD52 (54.07%), 56 (54.02%), 71 (54.45%), 82 (53.63%), 85 (54.21%), 103 (17.92%) in the Knight plan (C46); HD32 (52.35%), 53 (41.60%), 68 (53.30%), 69 (50.61%), 83 (38.58%), 85 (49.21%) in the new ALBC plan (Doc. 221-7); SD28 (51.55%) in the Sanders plan (C47); SD23 (54.19%), 28 (50.24%) in the new ALBC plan (Doc. 221-9). The plaintiffs’ expert said that at least 50% black *voting* population was necessary for minority voters to achieve the ability to elect. (NPX 232 at 20; Tr. 3.58, 3.65, 3.79; *see also* Doc. 204 at 112). But because the percentage of black *voting* population is typically several percentage points lower than the *total* black population, the total black population in any given district must exceed 50% to achieve a 50% black voting population. (*See* Doc. 203 at 44–46, 70).

Adding white voters for the sole purpose of altering the total percentage of black voters in a district is itself a race-based classification.

Finally, the failure of the plaintiffs to propose a Voting-Rights-Act-compliant alternative is especially important because Section 5 required that *the State* prove the negative proposition that the plans were *not* motivated by a discriminatory purpose. Imagine the strength of the purposeful discrimination argument if the State had adopted one of the plaintiffs' made-for-litigation plans and (1) ignored the suggestions of black legislators for their own districts, but incorporated the suggestions of white legislators for their districts, (2) reduced the black populations in majority-black districts by flooding them with white voters who tend to vote Republican, (3) created scores of districts that were less than the 60% to 65% threshold that black political leaders referenced and caselaw supported, and (4) acted in a substantially different manner than the Democrats had when they redistricted in 2001. It would have been very difficult for the State to bear *its* burden to establish that those plans did *not* have a discriminatory purpose under Section 5 or to win a vote dilution case under Section 2. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266-67 (1977). Unlike the plaintiffs, the Republican drafters of the State's plans did not have the luxury of playing chicken with the Voting Rights Act.

If this Court finds that race predominated over traditional districting principles in any specific district—which plaintiffs have failed to show—it has no alternative but to find that the use of race in that district was narrowly tailored.



The plaintiffs have not shown any alternative way of drawing these district lines in compliance with the undisputed obligations of the Voting Rights Act, the background principles of one-person one-vote, and the Legislature's redistricting guidelines. The State's districts satisfy strict scrutiny.

**B. 65% black districts are reasonably necessary to comply with the Voting Rights Act.**

In the alternative, all districts that are approximately 65% black or less are narrowly tailored. Narrow tailoring does not require “a legislature [to] guess precisely what percentage reduction a court or the Justice Department might eventually find to be retrogressive.” *ALBC*, 135 S. Ct. at 1273. Instead, “a court’s analysis of the narrow tailoring requirement insists only that the legislature have a ‘strong basis in evidence’ in support of the (race-based) choice that it has made.” *Id.* at 1274. This is a flexible standard; it “does not demand that a State’s actions actually be necessary to achieve a compelling state interest in order to be constitutionally valid.” *Id.* (internal quotation marks omitted). Rather, States “may have a strong basis in evidence to use racial classifications in order to comply with a statute when they have *good reasons* to believe such use is required, even if a court does not find that the actions were necessary for statutory compliance.” *Id.* (internal quotation marks omitted).

The drafters of Alabama’s plans had a “strong basis in evidence” not to reduce majority-black districts below 65% black. The Supreme Court held in this case that, to comply with Section 5, “minority voters [must] retain the ability to elect their preferred candidates.” *ALBC*, 135 S. Ct. at 1273. According to the Court,

the right question is: To what extent must the State “preserve existing minority percentages in order to maintain the minority’s present ability to elect the candidate of its choice?” *Id.* at 1274. *See also Voinovich v. Quilter*, 507 U.S. 146, 154 (1993) (“Placing black voters in a district in which they constitute a sizable and therefore ‘safe’ majority ensures that they are able to elect the candidate of their choice.”). The State had a strong basis in evidence to answer that question with “approximately 65% black.”

**1. The record shows that black political leaders supported districts that are approximately 65% black.**

Alabama’s drafters relied on the best evidence available to them to ensure that they did not diminish black voters’ ability to elect: the existing districts, the Democrats’ prior redistricting practices, and the suggestions of black political leaders. (*See* Doc. 203 at 170). In this respect, it is telling that only 4 of the 13 House districts that the plaintiffs criticize as being too close to the “quota” are above 65% black. (*See* Ex. 2). None of the Senate districts that are criticized as being too close to the “quota” is above 65% black. (*See* Ex. 2). The following record evidence establishes that black political leaders, including the plaintiffs, supported majority-black districts that are approximately 65% black.

(1) At the public hearing in Thomasville, on October 13, 2011, Rep. Thomas Jackson, an ALBC member, said that, while a majority-minority House district in that part of the State should not be “ninety-nine percent minority,” it should be “sixty-two or sixty-five percent.” (C16 at 8).

(2) At the public meeting in Selma, on October 18, 2011, Sen. Hank Sanders, an ALBC member, suggested that the black-majority districts “ought not to be less than 62 percent.” (C21 at 6). He explained, “Many times the population of a district is not reflective of the voters at all in that district. Sometimes a lot of people don’t vote. Sometimes a lot of people can’t vote. They might be in prison or other kinds of institutions. Sometimes a lot of people are discouraged for one reason or another.” (*Id.*). Sen. Sanders concluded, “So I would hope that 62 percent is a *minimal* [total population percentage] for the majority African-American district.” (*Id.*) (emphasis added).

(3) Sen. Dial testified that, when the Senate plan was being formulated, none of the ALBC Senate members “ask[ed] him for a district with 55 percent black total population.” (Tr. 1.44; *see also* Tr. 1.94) (“I never had a senator tell me to not put too many minorities in his or her district.”).

(4) Rep. Thad McClammy, an ALBC Member, gave Rep. McClendon a map and demographic data for the black-majority House districts in Montgomery County. That map drew those House districts “inside Montgomery County without a District 73.” (Tr. 3.134). Randy Hinaman testified that he “tried to use the concept of using District 73 to repopulate the minority districts in Montgomery County.” (Tr. 3.134). McClammy’s districts had the following black population in the Montgomery districts:

HD 76:	75.62%
HD 77:	67.34%
HD 78:	73.03%

SDX 470, C45.

(5) At trial, Dr. Joe Reed, a representative of The Alabama Democratic Conference, testified that his then-present opinion was that the black population in a black-majority district usually is safe when it is “[a]round 60 percent” of the total population, (Tr. 2.157), although he agreed that it may need to be closer to 65% in some instances. (Doc. 203 at 70). While this testimony was offered after the plans were enacted, it is substantially consistent with the other evidence outlined above.

**2. Courts have concluded that 65% percent is an appropriate threshold to maintain the ability to elect.**

The Supreme Court recognized in this case that 65% is an appropriate rule of thumb to ensure that black voters do not retrogress in their ability to elect. The Court explained, in a hypothetical, that “reduc[ing] the percentage of the black population from, say, 70% to 65% would [not likely] have a significant impact on the black voters’ ability to elect their preferred candidate.” *ALBC*, 135 S. Ct. at 1273. The Court chose a hypothetical cutoff of 65% for a reason: 65% is consistent with its prior precedents. *See, e.g., United Jewish Organizations of Williamsburgh, Inc. v. Carey*, 430 U.S. 144, 164 (1977) (“We think it was reasonable for the Attorney General to conclude in this case that a substantial nonwhite population majority in the vicinity of 65% would be required to achieve a nonwhite majority of eligible voters.”).

Other courts have likewise concluded that 65% is an appropriate number for maintaining the ability of minority voters to elect the candidate of their choice. In *Texas v. United States*, 831 F. Supp. 2d 244, 263 (D.D.C. 2011) (three-judge court),

the court wrote, “A district with a minority voting majority of sixty-five percent (or more) essentially guarantees that, despite changes in voter turnout, registration, and other factors that affect participation at the polls, a cohesive minority group will be able to elect the candidate of its choice.” *See also id.* at 263 n.22. The ADC’s attempt to distinguish that conclusion by attributing it to the construction of a Hispanic-majority district is without merit. A Hispanic-majority district may have been at issue in *Texas v. United States*. But there is no reason to believe that the same factors that affect the political performance of a majority-minority district in Texas, such as turnout and registration, will not also affect a majority-minority district in Alabama.

Moreover, the 65% figure is supported by plenty of additional authority. Multiple circuits have used it as a guideline. *Ketchum v. Byrne*, 740 F.2d 1398, 1415–16 (7th Cir. 1984) (“65% of total population is a widely recognized and accepted criterion in redistricting formulations.”); *Latino Political Action Comm., Inc. v. City of Boston*, 784 F.2d 409, 414 (1st Cir. 1986) (“Where voting is highly polarized, a 65 percent figure is a generally accepted threshold which has been used by the Department of Justice and reapportionment experts.”); *Barnett v. Daley*, 32 F.3d 1196, 1198 (7th Cir. 1994) (“The rule of thumb is that [minority] groups must have at least a 65 percent majority in the electoral district in order to have a reasonable assurance of being able to elect a candidate of their choice.”); *African Am. Voting Rights Legal Def. Fund, Inc. v. Villa*, 54 F.3d 1345, 1348 n.4 (8th Cir. 1995) (“[E]ither 60% of the voting age population or 65% of the total population is

reasonably sufficient to provide black voters with an effective majority.”); *Cousin v. Sundquist*, 145 F.3d 818, 829 (6th Cir. 1998) (criticizing a district with 50.3% black voting population as having a “razor-thin” margin that “does not meet the ‘safe district’ standards”); *Barnett v. City of Chicago*, 141 F.3d 699, 702–03 (7th Cir. 1998) (“[I]t is a rule of thumb that blacks must be at least 65 percent of the total population of a district in order to be able to elect a black.”); *Cottier v. City of Martin*, 604 F.3d 553, 568–69 (8th Cir. 2010) (continuing to apply the 65% figure as a guideline).

District courts have also used that figure as a guideline. For example, this District Court, per Judge Thompson, has previously held that “black populations of 56% and 63%” in Alabama “violate[] section 2.” *Dillard v. Crenshaw County*, 649 F. Supp. 289, 298 (M.D. Ala. 1986). Instead, Judge Thompson approved a remedial plan with “black populations of 64.36% and 65.86%.” *Id.* See also *Mississippi v. United States*, 490 F. Supp. 569, 575 (D.D.C. 1979), *aff’d sub nom. United States v. Mississippi*, 444 U.S. 1050 (1980) (“A district should contain a black population of at least 65 percent or a black VAP of at least 60 percent to provide black voters with an opportunity to elect a candidate of their choice.”); *Gingles v. Edmisten*, 590 F. Supp. 345, 358 n.21 (E.D.N.C. 1984), *aff’d in part, rev’d in part sub nom. Thornburg v. Gingles*, 478 U.S. 30 (1986) (explaining that “a general ‘rule of thumb for ensuring an effective voting majority is 65%,” and “that the extant 55.1% black population majority does not constitute an effective voting majority”); *Neal v. Coleburn*, 689 F. Supp. 1426, 1438 (E.D. Va. 1988) (“[T]he 65% figure is an

approximation of the type of corrective super-majority that may be needed in any particular case.”); *Fund for Accurate & Informed Representation, Inc. v. Weprin*, 796 F. Supp. 662, 672 (N.D.N.Y.), *aff’d*, 506 U.S. 1017 (1992) (“[T]he use of a lower population threshold [than 65%] for minority districts may lead to ineffective minority control districts.”); *Prosser v. Elections Bd.*, 793 F. Supp. 859, 870 (W.D. Wisc. 1992) (affirming the use of a 60% “rule of thumb”); *Campuzano v. Ill. State Bd. of Elections*, 200 F. Supp. 2d 905, 910–11 (N.D. Ill. 2002) (noting “the general guideline that blacks must comprise 65% of a district’s total population to control the electoral outcome in that district” and the alternative “60% VAP rule of thumb” that can be used if “reliable VAP statistics are available”); *Texas v. United States*, 831 F. Supp. 2d 244, 263 n.22 (D.D.C. 2011) (noting that the U.S. Supreme Court and other courts had used the 65% figure as a guideline); *Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, 835 F. Supp. 2d 563, 582 (N.D. Ill. 2011) (using 65 to 70% as a rule of thumb for Latino voters).

**3. Other States and local governments have been sued under Section 2 for reducing majority-black districts below 70% black.**

Even though the plaintiffs argue that 65% is a number that makes less sense in the 2000s than it did in the past, recent litigation shows that even 65% is not a safe harbor from Voting Rights Act lawsuits. In the 2000 round of redistricting, black voters often sued when districts were reduced below 70%. For example, in 2002, voters in Boston sued under Section 2 when a district’s minority voting age population was lowered from 74.1% minority voting age population to 60.6% voting

age population. *Black Political Task Force v. Finneran*, Complaint ¶ 33, No. 1:02-cv-11190-DPW (D. Mass. June 13, 2002).

These same kinds of Section 2 lawsuits have been filed after the 2010 Census. In fact, the same lawyer who represents the ADC here—John Tanner—recently argued in a Section 2 case in Alabama that districts that are less than 70% black do not give black voters an equal opportunity to elect. *See Allen v. Evergreen*, Doc. 21-5 at 1, No. 1:12-cv-00496-CG-KD-EC (S.D. Ala. Dec. 12, 2012). After the 2010 redistricting cycle, he represented black voters who sued the municipality of Evergreen, Alabama, to complain about low black population percentages in the three relevant majority-black districts. The plaintiffs proposed districts with total black population percentages of 65.57%, 86.46%, and 87.09%. *Id.*

Similarly, in Mississippi, black voters recently sued Quitman County, the county Democratic executive committee, and the county board of election commissioners because the districts for electing the board of supervisors were under 70% black. *Figgs v. Quitman County*, No. 4:14-cv-00119-MPM-JMV, Complaint at 1, (N.D. Miss. Aug. 15, 2014). The plaintiffs alleged that “to afford African American citizens an equal opportunity to elect candidates of their choice, the supervisory district needs to be at least seventy percent (70%) or greater African American population.” *Id.* at 6. Two of the districts are 51.52% and 54.68% black, and the plaintiffs claim that districts with this low percentage violate Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the U.S.



Constitution. *Id.* at 5–6, 9–10. In short, even the 65% “rule of thumb” does not prevent Section 2 claims by black voters and political leaders.

**4. The plaintiffs’ own expert has opined that majority-black districts in Alabama should be at least 62% black to give black voters an equal opportunity to elect under Section 2.**

This Court has already rejected as incredible plaintiffs’ expert Theodore Arrington’s opinion about the population figure that is necessary to protect minority voters’ ability to elect the candidate of their choice. (Doc. 203 at 84). He testified in this case that because the black population percentage of the districts exceeded 51%, they were “packed.” (*Id.*) But, as this Court found, he had testified previously that an Alabama district that was 61% black “would offer only an opportunity for black voters to elect the candidate of their choice, not a guarantee that black voters would be able to elect a candidate of their choice.” (*Id.* (citing Tr. 3.80–81)). And this was not Arrington’s only inconsistency: “he had also testified in 2000, contrary to his testimony on direct examination in this matter, that no clear minimum could be set to determine across jurisdictions what voting-age population is necessary to give a minority group the opportunity to elect its candidate of choice.” (*Id.* (citing Tr. 3.78)).

Indeed, the plan Arrington proposed in that earlier case contained three majority-black county commission districts (out of five total), with black *voting age* populations of 62.2%, 57.0%, and 61.9%. *Wilson v. Jones*, 130 F. Supp. 1315, 1319 (S.D. Ala. 2000). He apparently believed that this plan “would provide both black and white citizens in Dallas County an equal opportunity to participate in a

political process and elect candidates of their choice.” *Id.* at 1320. And in fact, he called the 61.9% district “a swing district, by which he meant that it could elect either a black or a white.” *Id.* He said that “a district that was more than sixty-one percent black in voting age population” was “one where black citizens would have an opportunity to elect a candidate of their choice, noting that his sixty-two percent black voting age population district will probably elect a black.” *Id.* at 1320 n.6 (internal quotation marks omitted).

\* \* \*

This Court said in its prior decision that it could not identify a precise cutoff under which black voters would lose the ability to elect. (*See* Doc. 203 at 99). But such precision is unnecessary to answer the question at hand. The Supreme Court in this case explained that a legislature need not “guess precisely what percentage reduction a court or the Justice Department might eventually find to be retrogressive” or “determine precisely what percent minority population §5 demands” *ALBC*, 135 S. Ct. at 1273. A redistricting plan may pass strict scrutiny, “even if a court does not find that the actions were necessary for statutory compliance.” *Id.* at 1274. As relevant here, any majority black district that is 65% black or less is narrowly tailored.

## **ARGUMENT: INDIVIDUAL DISTRICTS**

In this part, we address each individual district. For some districts, we have produced comparison maps between the old and new districts. These maps are in numerous places in the record. But to ensure that the maps in this brief were detailed enough to be useful, these comparison maps were prepared through the web portal for the Alabama Reapportionment Office at <http://policymaker.alabama.gov/Districts.aspx>. All sides of this litigation have used this device. The initial screen brings up side-by-side maps of the 2010 and 2014 Senate plans. A drop-down menu in the upper-right corner of the screen permits the user to switch between the House and Senate plans. Scrolling on the 2010 map, or magnifying the map to focus on a single district, will automatically make corresponding changes to the 2014 map, permitting the user to compare a single district from the 2010 plan and the 2014 plan.

### **I. Senate Districts**

#### **A. Birmingham (SDs 18, 19, and 20)**

The plaintiffs have failed to identify any specific evidence showing that race predominated in the drawing of the Birmingham Senate districts. This is unsurprising: the incumbent legislators in SD18, SD19, and SD20 proposed the lines that became their 2012 districts. The population percentages are similar across proposed alternative plans, highlighting the fact that the demographics in these districts result from the demographics of the Birmingham area. And the population percentages remain almost identical even when the split precincts are

reunited. But the Birmingham Senate districts also meet strict scrutiny because their black populations do not exceed 65%.

**1. The incumbent senators drew the Birmingham Senate districts.**

In 2010, there were three pre-existing majority-black districts in Jefferson County in the Birmingham area: SD18, SD19, and SD20. The Census showed that the three majority-black Senate districts were under-populated and had to increase in size to come within 1% of ideal population:

Senate District Number	Act 2012–603 Total Black Pop. (%)	Overpop.(+) or Underpop.(–) of 2001 District Using 2010 Census Data (%)	2001 Senate Total Black Pop. (%)	1993 Senate Total Black Pop. (%)
18	59.12	–17.64	66.865	65.89
19	65.31	–20.06	66.227	63.00
20	63.15	–21.37	65.697	64.28

(See Doc. 203 at 44) (*citing* APX 7; NPX 310, and NPX 312); (*see also* SDX 400, SDX 407, C34). The drafters turned to the incumbents for a solution.

As this Court previously found, Sen. Rodger Smitherman, who represents SD18, largely designed these three Senate districts:

Senator Dial gave Hinaman proposed maps for the three majority-black Senate districts in Jefferson County that Senator Rodger Smitherman (D), a black legislator from Jefferson County, had provided him. (Hinaman Depo. 43, June 25, 2013). Senator Dial instructed Hinaman to incorporate those maps into the Senate plan to the extent possible because they represented the wishes of the three senators from those districts. (Hinaman Depo. 43, June 25, 2013). Hinaman drew the majority-black districts in Jefferson County to be

substantially the same as the maps provided to him by Senator Dial. (Hinaman Depo. 43, June 25, 2013).

(Doc. 203 at 31–32). Randy Hinaman testified that he incorporated Sen. Smitherman’s map. (Tr. 3.121, 126–27). Hinaman described only one change: because he removed a few precincts from SD19 and added them to neighboring SD5 at that incumbent’s request, he had to add a few other precincts to SD19 to equalize population. (Tr. 3.127). But all of these precincts were majority-white, and Hinaman testified that any other changes to Smitherman’s plan were “unintentional.” (*Id.*)

There is no evidence that Sen. Smitherman focused on racial targets when he drew these districts. Sen. Smitherman testified at trial. He did not dispute the use of the plan he drew, and his complaints about the 2012 plans were primarily about their purported effect on the makeup of local delegations. (Tr. 2.6–39). And to this point, Sen. Smitherman testified that he believed the alleged changes to the county delegations were done for *partisan* purposes. (Tr. 2.40).

**2. The evidence does not establish that the drafters subordinated race-neutral criteria to hit a “target.”**

The plaintiffs argue that the Birmingham Senate district lines result from the Legislature’s efforts to reach a purported “target,” but the preexisting district lines and the population of the local area determined the lines of SD18, SD19, and SD20. Black people make up about the same percentage of SD19 and SD20 as in the 2001 and 1993 plans, and a smaller percentage in SD18. The general shape and location of these districts changed little from 2001 to 2012, showing that the

Legislature preserved the core of the districts. (SDX 476, 477). Because these districts cover most of the city limits of Birmingham, they are necessarily majority black. The City of Birmingham itself (212,113 total population) is 73.4% black. (Def. Supp. Ex. 8 at 74). As for surrounding municipalities, the City of Bessemer is 71.2% black. (*Id.* at 67). Fairfield is 94.6% black. (*Id.* at 287). Midfield is 81.6% black. (*Id.* at 549). Lipscomb is 61% black. (*Id.* at 478). And Brighton is 81% black. (*Id.* at 97). (By contrast, Jefferson County as a whole, including these municipalities, is 42.5% black. (APX 19). Districts that cover these areas will necessarily reflect the area demographics.

A comparison of these districts and the “target” contradicts the plaintiffs’ arguments and fails to establish racial predominance. The percentage of black population in each district decreased, and SD19 and SD20 vary widely from the “target,” missing the “mark” by -6.28% and -14.67%, respectively:

Senate District	SDX 400 Act 2012-603 Black %	NPX 340 Black % in 2001 plan using 2010 Census Data	Difference
18	59.10	59.92	-.82
19	65.31	71.59	-6.28
20	63.15	77.82	-14.67

Although SD18 (59.10%) is within a percentage point of black population percentages of the 2001 plan using 2010 Census data (59.93%), it is not meaningfully different than it is in the plaintiffs’ proposed maps. In fact, in the new map ALBC proposes, SD18 is 59.8% black, which is even *closer* to the “target.” (APSX 27).

Neither the plaintiffs nor their allies have ever proposed Birmingham Senate districts with meaningful differences in racial makeup. Those districts as proposed in the Sanders plan (C47), the Buskey plan (C48), and the 2015 ALBC plan (APSX 27), have roughly the same racial makeup as the challenged plan:

<b>Black Population Percentages in Various Proposed Senate Plans</b>				
Senate District Number	SDX 400 2012 Plan as Passed	C47 Sanders Plan	C48 Buskey Reap. Plan 2 (ADC Plan)	APSX 27 ALBC Senate Plan 4/4/2015
18	59.10	58.49	61.32	59.80
19	65.31	65.30	62.89	66.55
20	63.15	62.82	65.10	63.68

These other plans, of course, do not observe the Legislature's decision to adopt a  $\pm 1\%$  deviation, permitting the drafters to gerrymander on a partisan basis (or, as seen in many parts of the State, lowering the black percentages in districts with roughly the same number of black citizens by overpopulating the districts with additional white voters).

Underscoring this point, the total number of black persons in the districts remains roughly the same across the various plans:

<b>Black Population Totals</b>				
Senate District	DX 400 Plan as Passed	C47 Sanders Plan	C48 Buskey Reap. Plan 2	APSX 27 ALBC Senate plan
18	79939	80587	82940	78611
19	88314	88104	83583	87674
20	85382	82655	84693	83587

SD18, 19, and 20 would have about the same number of black persons in them regardless of who drew them.

**3. The evidence does not establish that the drafters split precincts on the basis of race or that, if they did, such splitting was (1) inconsistent with race-neutral criteria or (2) affected a substantial number of voters.**

The plaintiffs do not argue about county splits here because they cannot: SD18, SD19, and SD20 are all within Jefferson County (but the ADC appears to complain that these districts were *not* extended into other counties, (*see* Doc. 258 at 39 n.20)). But the plaintiffs' fixation on precinct splits also fails to help them establish racial predominance. The incumbents' map "split a number of precincts, which [Hinaman] input into the draft plan as they came to [him]." (APX 68 at 3; Doc. 203 at 146). But even if all the precincts in these districts were unsplit, the population changes would be negligible.

Ex. 3 to this brief (a collection of spreadsheets for each majority district showing the changes to minority percentages and total population if precincts are kept whole, explained above illustrates what would happen to the districts' minority population percentages if there were *no* precinct splits. The black percentage in SD18 would go *up*, from 59.10% to 59.38% (coming even closer to plaintiffs' 59.93% "target"), if precincts were kept whole. The black percentage in SD19 and SD20 would decrease slightly if precincts were kept whole, from 65.31 to 64.82% and from 63.14 to 61.90%, respectively. Precinct splits made practically no difference.

Nor have the plaintiffs shown that a significant number of voters were moved on account of their race. In SD18, a net total of 22,786 voters were added to SD18:



12,456 blacks and 9091 whites. (ADC Supp. Ex. 5). Thus, roughly 55% of the voters added to SD18 were black, and the additions *lowered* the percentage of minority voters in the district. In SD19, a net total of 26,053 persons were added to get the district within acceptable distance of the “ideal” population, 10,141 blacks and 15,188 whites. (ADC Supp. Ex. 5). That is, the group of voters added to SD19 was only 39% black. And in SD20, a net total of 27,836 persons were added, 1,818 blacks and 22,800 whites. (ADC Supp. Ex. 5). The net additions to SD20 were only 6.53% black. Ultimately, the plaintiffs have not shown that a significant number of voters were placed in or out of SD18, SD19, and SD20 because of their race, and, as a result, they have failed to show that strict scrutiny applies in these districts.

**4. SD18, SD19, and SD20 satisfy strict scrutiny.**

Finally, SD18, SD19, and SD20 also satisfy strict scrutiny. None of these districts have a minority population exceeding 65%. There is no evidence of any alternative way these districts could or should have been drawn in compliance with applicable law, including the Legislature’s guidelines. They are narrowly tailored to comply with Alabama’s obligations under the Constitution and Voting Rights Act.

## B. West Black Belt (SD 23 and SD24)

The plaintiffs have failed to show that race predominated in drawing SD23 and SD24. These districts cover a large and sparsely populated geographical area of west Alabama, abutting Alabama's border with Mississippi. Changes to the lines of these districts largely resulted from the wishes of incumbent senators in the area and geographical realities. The counties in these districts have high black population percentages, causing the districts to have similar percentages. And the most unusual feature of SD24 — the “hook” reaching into Tuscaloosa — was part of the 2001 district and appears in all the alternative plans proposed during the drafting process. These districts also satisfy strict scrutiny because their black population percentages do not exceed 65%.

### 1. These districts were underpopulated, and geography and incumbent wishes limited the drafters' options for adding population.

The 2010 Census figures revealed significant underpopulation in these two pre-existing majority-black districts in the Black Belt area west of Montgomery. The drafters had to increase the size of these districts to bring their populations within 1% of ideal population:

Senate District Number	Act 2012–603 Total Black Pop. (%)	Overpop.(+) or Underpop.(–) of 2001 District Using 2010 Census Data (%)	2001 Senate Total Black Pop. (%)	1993 Senate Total Black Pop. (%)
23	64.84	–18.03	62.305	63.46
24	63.22	-12.98	62.409	65.36

(See Doc. 203 at 44) (*citing* APX 7; NPX 310, and NPX 312); (*see also* SDX 400, SDX 407, C34). These districts have always been between 62% and 65% black. (*Id.*)

The drafters were extremely limited in their available choices for how to expand and repopulate SD23 and SD24. SD24 could not go west into Mississippi or east into SD23, which was itself under-populated. Hinaman testified that he expanded that district where he could: “I believe I moved—took it down further into Choctaw and Clark, rural areas, and also took it [north]—about half of Pickens County and put it in there. Probably a little bit more in the Tuscaloosa area.” (Tr. 3.123).

There were similar constraints on expanding SD23. SD23 could not have moved further west into Clarke County, because that would have created a conflict with the incumbent representing SD22, who resided in Clarke County near the boundary of SD23 and SD22. (Def. Supp. Ex. 5). The ADC plaintiffs criticize the drafters’ removal of Autauga County from SD23, but the incumbent legislator in SD23 requested changes to his district lines, wanting his district to cover all of Lowndes County and none of Autauga County. (Doc. 258 at 30; Tr. 1.37–39). Accordingly, Hinaman testified that he expanded SD23 so that it “picked up the rest of Lowndes, picked up Butler, and picked up a little bit more of Clark, I believe.” (Tr. 3.125). The southern border remained almost unchanged from the previous plan. (SDX 476, 477).

As this Court found, the need to expand and contract districts in the Mobile area and the decision not to cross Mobile Bay also affected these districts:

“Hinaman decided instead to repopulate District 35 by taking population from District 34; to transfer population from a portion of District 22 in Mobile County to District 34; to move northern portions of District 32 in Baldwin County into District 22; and to repopulate Districts 23 and 24 with some portions of District 22. (APX 49).” (Doc. 203 at 37–38).

Although they offer no map showing a workable alternative (and that observes the Legislature’s criteria, including the  $\pm 1\%$  rule), the ADC argues that SD23 could have been expanded by adding all of Butler County. (See Doc. 258 at 33). But, as they also note, Butler County *is* entirely within SD23. And the ADC argues that all of Pickens County could have been added to SD24. (Doc. 258 at 33). But doing so would split one part of SD21 (in Lamar County) from the other part of SD21 (in Tuscaloosa County) and likely require additional changes to SD5 to the north. Most importantly, the plaintiffs argue that these changes would have resulted in a 61.39% black SD23 and a 59.76% black SD24, without explaining how these changes (or their reasoning) would be *consistent* with race-neutral criteria.

**2. The evidence does not establish that the drafters subordinated race-neutral criteria to hit a “target.”**

In light of the demographics of the Black Belt, there is no reason to believe that the drafters disregarded race-neutral criteria to meet a “quota” or “target.” SD23, at 64.84% black, is close to the racial makeup of SD23 in the 2001 plan using 2010 Census data (64.76% black). (See C29). And SD24, at 63.22% black, is close to the racial makeup of SD24 in the 2001 plan using 2010 Census data (62.78% black).

But considering the racial composition of the counties in that part of the State, it would require a racial gerrymander to have districts that are significantly different:

<u>County</u>	<u>% Black Population</u>
Greene	81.8%
Sumter	75.2%
Lowndes	73.9%
Wilcox	72.8%
Dallas	70.0%
Perry	69.0%
Hale	59.2%
Marengo	52.2%
Conecuh	47.0%
Clarke	44.3%
Butler	43.8%
Choctaw	43.7%
Pickens	42.2%

(APX 19). There is no way to divide these counties into Senate districts without creating majority-black districts, regardless of the race-neutral principles applied.

For this reason, competing plans also have high black percentages in these districts, lowered only by ignoring the drafters' race-neutral criteria:

<b>Black Population Percentages in Various Proposed Senate Plans</b>				
Senate District Number	SDX 400 2012 Plan as Passed	C47 Sanders Plan	C48 Buskey Reap. Plan 2 (ADC Plan)	APSX 27 ALBC Senate Plan 4/4/2015
23	64.84	57.75	61.23	54.19
24	63.22	56.90	60.43	60.42

<b>Black Population Totals</b>				
Senate District	SDX 400 Plan as Passed	C47 Sanders Plan	C48 Buskey Reap. Plan 2	APSX 27 ALBC Senate plan
23	87754	80323	79760	75082
24	87072	79602	82983	84843

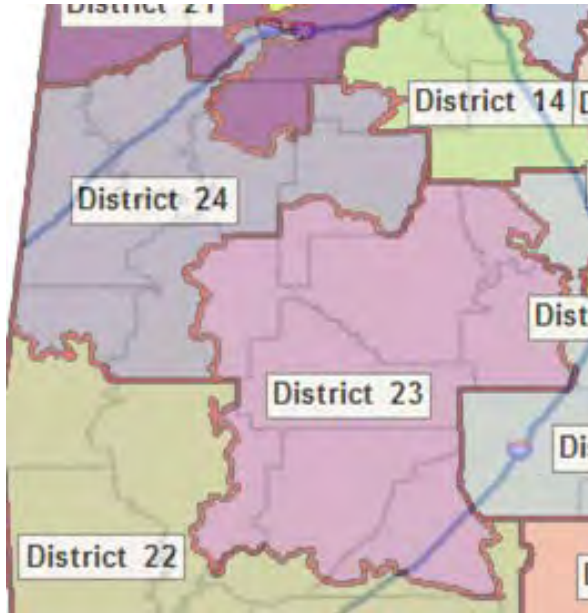
If the drafters of the State's plans could have ignored the residence of SD22's incumbent in Clarke County, then they might have decided to put that entire County in SD24, as Sen. Sanders' plan suggests. If the drafters of the State's plans could have expanded SD23 into Autauga County, even though the incumbent opposed that expansion, then they might have adopted a plan like the ADC's plan for SD23. But the drafters had to reject these possibilities because they were applying *race-neutral criteria*, not because they were focused on a racial target.

**3. The evidence does not establish that the drafters split counties on the basis of race.**

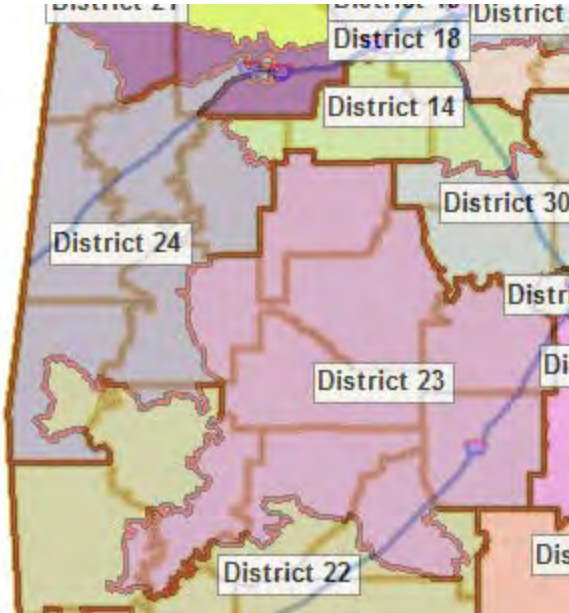
Plaintiffs argue that "excessive" county-splitting is evidence of racial gerrymandering, but a comparison with the prior plan shows that is not so. In the 2001 plan, SD24 consisted of all of Sumter and Greene Counties; portions of Hale, Perry, Choctaw, Marengo, and Bibb Counties; and a hook into Tuscaloosa County. (SDX 476, 477). In the 2014 plan, SD24 consists of all of Sumter and Greene Counties; portions of Hale, Choctaw, and Marengo Counties; and a hook into Tuscaloosa County. It no longer contains portions of Bibb or Perry, but added portions of Pickens and Clarke. (SDX 476-477). That is, in both plans SD24 contains

two whole counties and portions of 6 counties, including much the same hook into Tuscaloosa County.

2001 SD23 & 24



2012 SD23 & 24



SD23 has fewer county splits in the 2012 plan than in the 2001 plan. In the 2001 plan, SD23 consisted of Dallas and Wilcox Counties in their entirety, plus parts of Perry, Marengo, Clarke, Monroe, Conecuh, Lowndes, and Autauga Counties (7 county splits). In the 2012 plan, SD23 contains the entireties of 5 counties (Perry, Dallas, Lowndes, Butler, and Wilcox) and portions of only four counties (Monroe, Conecuh, Clarke, and Washington) (4 county splits). (SDX 401, 407, 476-477).

Plaintiffs make much of a so-called “contorted, bizarrely-shaped hook” that extends into Tuscaloosa County as part of SD24. (Doc. 258 at 35). As discussed above, SD24 had much the same hook in the 2001 plan. In the 2012 plan, the portion of Tuscaloosa County that is in SD24 is 60.88% black. (SDX 401). In the 2001 plan, the portion of Tuscaloosa County in SD24 was a very similar 58.9%



black. (SDX 407). And tellingly, the alternative Senate plans offered this cycle likewise contain “contorted, bizarrely-shaped” hooks into Tuscaloosa County: the Sanders plan (C47) and the Reed Buskey plan (C48), and the new ALBC plan (APSX26):

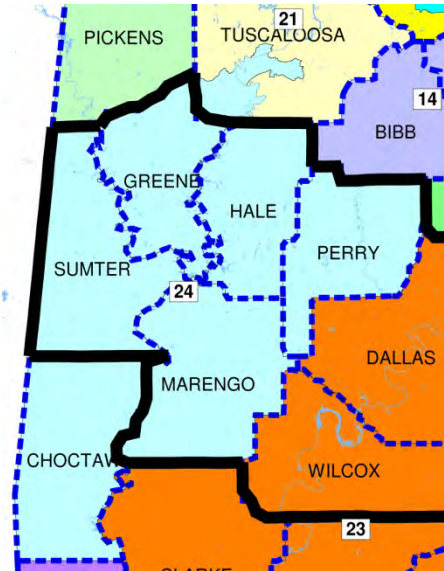
**Sanders Plan (C47)**



**Reed Buskey Plan (C48)**



**ALBC plan (APSX26)  
(SD24 in light color)**



The hook, all seem to believe, is a part of preserving the core of old SD24.

**4. The evidence does not establish that the drafters split precincts in contravention of race-neutral principles.**

Both sets of plaintiffs complain about precinct splits. But unsplitting the precincts makes only a negligible difference. If all precincts were kept whole around the edges of SD23, blacks would comprise 63.62% of the district, as opposed to its current 64.84%. (Ex. 3). However, it is impossible to know if unsplitting precincts would throw off the population totals of surrounding districts or upset another



important race-neutral objective, such as keeping the districts in as close to the same location as possible. If all precincts were kept whole around the edges of SD24, one scenario has the black percentage at 62.36%, as opposed to its current 63.22%. (Ex. 3). We do not know whether keeping those precincts whole would have ripple effects that would impact SD23 or SD22, or even down into Mobile and Baldwin Counties. Plaintiffs certainly have not shown otherwise. All we know is that the precincts could be kept whole without making any significant change to the racial composition of *these* districts, belying the argument that the precinct splits were for the purpose of race or affected a substantial number of voters. For all these reasons, the plaintiffs have not proven that race predominated over race-neutral redistricting criteria in drawing SD23 or SD24.

**5. SD23 and SD24 satisfy strict scrutiny.**

Finally, SD23 and SD24 would also satisfy strict scrutiny. Neither district has a black population percentage exceeding 65%. There is no evidence of any alternative way these districts could or should have been drawn in compliance with applicable law, including the Legislature's guidelines. They are narrowly tailored to comply with Alabama's obligations under the Constitution and Voting Rights Act.

### **C. Montgomery (SD 26)**

SD26 received an inordinate amount of attention during this litigation because of a misleading sound bite about the net number of people added to it. But the actual numbers show just how misleading this figure is. SD26 has consistently had a high black population percentage over the years and throughout alternative plans because of Montgomery's demographics, not because of racial gerrymandering. The lines of SD26 are consistent with race neutral principles. And precinct splits had little effect on the population percentages, as shown by unsplitting them. SD26 also satisfies strict scrutiny because, on this record, there is no alternative way to draw it in compliance with the Constitution and Voting Rights Act.

#### **1. SD26's shape and population percentages result from the application of race-neutral criteria.**

SD26 complies with the Legislature's redistricting criteria. The district lines had to change significantly because of population changes, but both the incumbent of SD26 and the incumbent in adjacent SD25 remained in their respective districts. SD26 is entirely within Montgomery County and, therefore, does not cross county lines. And, as explained in more detail below, SD26 is almost entirely composed of residents of a single city—Montgomery. This Court has already made detailed factual findings about the reasons for changes to SD26's lines.

The attention SD26 received during and after the trial is largely due to a sound bite: "And of those 14,826 people [added to the district], only 36 were white." (Tr. 1.131). It is time to put that sound bite to rest. Catchy as it may be, it isn't true.

The plaintiffs' supplemental exhibits show that there were in fact 11,473 whites (out of 35,824 persons) added to SD26. (ADC Supp. Ex. 5). The population added to SD26 was 32% white and 60.2% black, meaning that the population added to the district had *fewer* blacks proportionally than the end result. (ADC Supp. Ex. 5). With all the varying population losses and gains, and with areas moved into and out of the District, the Legislature "moved 51,700 people altogether into and out of the district," (Doc. 258 at 36), to bring it within  $\pm 1\%$ . Those thousands included far more than 36 whites. The plaintiffs list five precinct splits that alone brought in 5,738 whites. (Doc. 256 at 177–178; Doc. 258-2 at 6). The district has 36 more whites *net* than it had before, but to say that the Legislature added only 36 whites without mentioning the "net" part of the equation is misleading.

And to the extent that "36 out of 14,826" is accurate as a net figure, it would mean that the Legislature moved 14,790 black people (net) into SD26 as part of its repopulation in 2012. How many black people did the Legislature move into SD26 as part of its repopulation by these plaintiffs in 2001? 14,934. (See Doc. 203 at 51), (citing APX 4, C34, and SDX 400)). That is, this Legislature moved fewer black people into SD26 than the former Democratically-controlled Legislature.

Another reason for the attention poured upon SD26 is that it is over 70% black. That, however, is nothing new. It was over 70% black in the past two plans that were drawn by, or with the support of, these plaintiffs:

Senate District Number	Act 2012–603 Total Black Pop. (%)	Overpop.(+) or Underpop.(–) of 2001 District Using 2010 Census Data (%)	2001 Senate Total Black Pop. (%)	1993 Senate Total Black Pop. (%)
26	75.13	–11.64	71.507	70.34

(See Doc. 203 at 44) (citing APX 7; NPX 310, and NPX 312); (*see also* SDX 400, SDX 407, C34). And, as discussed above, the population percentage fails to show that race predominated in drawing SD26. Thus, the two factors that have resulted in the hubbub about SD26 — the high percentage and the false statistic — are overblown.

This Court has already made detailed factual findings about the district, findings that it need not reconsider, tracing the cause of the current shape to the need to create a land bridge between SD25 and Crenshaw County:

Hinaman substantially decreased the land size of Senate District 26, a majority-black district in Montgomery County. (Trial Tr. vol. 2, 123, Aug. 9, 2013). Under the 2001 plan, Senate District 26 included the majority of Montgomery County, following the county lines. (Trial Tr. vol. 3, 122, Aug. 12, 2013). In 2010, the total population of District 26 was underpopulated by 11.64 percent and was 22.03 percent white and 72.75 percent black. (Ex. NPX 340; Ex. APX 7). To comply with the guideline of an overall deviation in population of 2 percent, Hinaman moved some of the densely populated precincts in the City of Montgomery into Senate District 26. (Trial Tr. vol. 3, 129, Aug. 12, 2013). Under the 2001 plan, Senate District 25 was located primarily in Elmore County to the northeast of Senate District 26. (Ex. SDX 477). To maintain contiguous districts and as a result of moving other districts, Hinaman created a land bridge through Montgomery County to connect District 25 with Crenshaw County to the south. (Trial Tr. vol. 3, 127–29, Aug. 12, 2013). This land bridge removed a large geographic portion of District 26, although it did not significantly reduce the population of the district. (Trial Tr. vol. 3, 128–29, Aug. 12, 2013). Under Act 603, the new redistricting plan for the Senate, Senate

District 26 maintains much of its former shape by following the county lines at the northern borders. (Ex. SDX 476). The district remains underpopulated by .08 percent and the percentage of the population that is black has increased slightly, from 72.75 percent to 75.22 percent. (Ex. APX 7).

(Doc. 203 at 38-39).

Under the 2001 plan, Senate District 26 covered an expansive area, including the majority of Montgomery County. (Trial Tr. vol. 3, 122, Aug. 12, 2013; Ex. SDX 477). In 2010, District 26 was underpopulated by 11.64 percent and was 72.75 percent black in total population. (Ex. NPX 340; Ex. APX 7). To comply with the 2 percent guideline, Hinaman added portions of Senate District 25 that were located in the City of Montgomery to repopulate District 26 and to maintain roughly the same black percentage of the total population. (Trial Tr. vol. 3, 129–130, Aug. 12, 2013). Hinaman also reassigned to Senate District 25 the largely white rural population in the southeast corner of Montgomery County. (Trial Tr. vol. 3, 128–129, Aug. 12, 2013). This decision increased the total black population in Senate District 26 to 75.22 percent, which is an unremarkable 2.44 percent difference. (Ex. APX 7). ...

District 26 is far more compact under the new plan than under the 2001 plan. The district is concentrated in the urban northeast corner of Montgomery County where the City of Montgomery lies instead of stretching across the entire county to envelop sparsely populated rural precincts. (Ex. SDX 476). Communities of interest in that district have been strengthened, the percentage of the black total population has remained relatively constant, and District 26 is now underpopulated by only .08 percent. (Ex. SDX 400).

(Doc. 203 at 140–141). These factual findings were not reversed and need not be reconsidered. Nor do the plaintiffs dispute them.

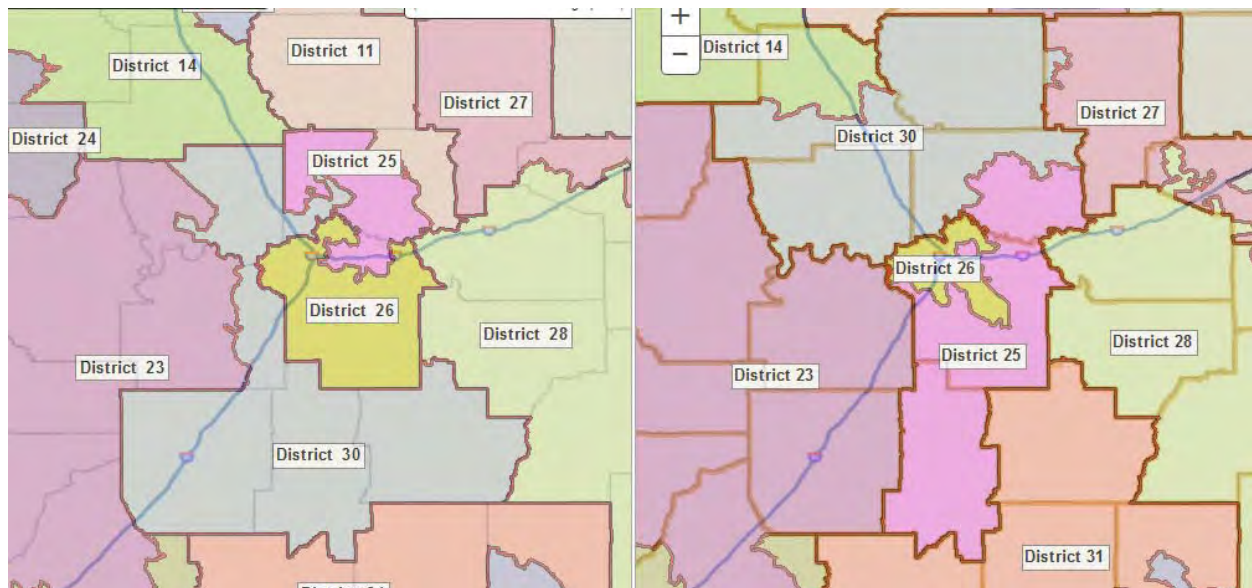
The plaintiffs do not present a realistic alternative to the existing lines. They argue that Crenshaw County should have been added to SD26 instead of SD25 to

solve the underpopulation of SD26. (Doc. 258 at 37–38). There are two problems with this suggestion: it leaves SD25 underpopulated, and there is no apparent reason for adding Crenshaw County other than increasing the white population of SD26. (See Doc. 258 at 34–35).

First, adding Crenshaw County to SD26 would not resolve the underpopulation of SD25. The need to create the “land bridge” — to include Crenshaw County into SD25 — is linked to changes made to SD30 to the North.

**2001 SD26 and surrounding area**

**2012 SD26 and surrounding area**



SD30 in the 2001 plan was a “tortured” district (APX 75 at 75) that stretched from Pike County southeast of Montgomery and circled around Montgomery County to split Lowndes, Autauga, and Elmore Counties. (SDX 476, 477). “Senator Taylor,” the incumbent in SD30, “was very much in accordance with having a more compact district that was all north of Montgomery County, which he has under the new map rather than the somewhat tortured map of the 2002 plan.” (APX 75 at 75). After

SD30 went entirely north of Montgomery County, SD25 needed to add population. (Tr. 3.175). The solution was to use the sparsely-populated rural area of Montgomery County — an area with a population of around 12,000, (Trial Tr. Vol. 3 at 176), and that was about 65% white, (*id.* at 129) — to connect SD25 to Crenshaw County. (See Doc. 203 at 159). Then, to round out SD26, the Legislature added few contiguous “additional precincts in the City of Montgomery north of Alabama Route 80,” a “reasonable response to the underpopulation of the District.” (Doc. 203 at 159).

Second, plaintiffs cite no traditional districting principle that would have made their alternative (adding Crenshaw County to SD26) a better choice. None of their original proposed plans combine Crenshaw County with SD26. They note that adding Crenshaw County to SD26 would have made SD26 less black. (Doc. 258 at 38). But that is not a good enough reason. The solution to allegedly putting a significant number of people into a district because of their race cannot be putting a significant number of *other* people into a district on account of a *different* race.

**2. The black population percentage of SD26 results from Montgomery’s demographics and does not support plaintiffs’ racial gerrymandering claim.**

The fact that SD26 is 75% black is not evidence that a significant number of people were put into a district on account of race. As stated, the district has been over 70% black for 25 years. Except for the removal of rural, sparsely populated portions of Montgomery County, SD26 is similar to the way it was drawn in 2001. (SDX 476, 477). The northern boundaries are identical, running along the Montgomery County border. It features a “lagoon” where SD25 takes in



neighborhoods inside the bypass, just as it did before. There is therefore no reason to be surprised that the racial composition changed very little. The City of Montgomery is 56.6% black (Def. Supp. Ex. 8 at bates 567), but it is undisputed that the black population is not evenly distributed throughout the city. As one of the plaintiffs testified, the “west side” of Montgomery is “about 98 percent black.” (Doc. 125-8 at 17).

The alternative plans proposed by the Plaintiffs vary somewhat, but the district is still over 70% in the Sanders plan and approaches that number in the Buskey plan (neither of which observed  $\pm 1\%$ ):

<b>Black Population Percentages in Various Proposed Senate Plans</b>				
Senate District Number	SDX 400 2012 Plan as Passed	C47 Sanders Plan	C48 Buskey Reap. Plan 2 (ADC Plan)	APSX 27 ALBC Senate Plan 4/4/2015
26	75.13	71.28	68.44	56.91

The following are the black population totals in the different plans, and only the new ALBC plan has a meaningfully different total:

<b>Black Population Totals</b>				
Senate District	SDX 400 Plan as Passed	C47 Sanders Plan	C48 Buskey Reap. Plan 2	APSX 27 ALBC Senate plan
26	102,520	93,668	95,822	79,077

In the Sanders plan, SD26 is underpopulated by 3.77%. (See C47). In the Buskey plan, even though SD26 contains more blacks than in the Sanders plan, the drafters



lowered the population percentage by including more whites and overpopulating the district by 2.58%. (*See* C48). And the new ALBC plan entirely reconfigures SD26 and SD25, bringing SD26 into Autauga County (a county split, no less), dividing communities of interest with an east-west border between the districts, overpopulating both districts and using irregular lines to make SD25 51% white. (APSX 27, APSX 32). So, yes, the plaintiffs have proposed variations of SD26 with a lower percentage of blacks than the plan as passed, but they have not shown that it can be done while observing  $\pm 1\%$  and other non-racial criteria. Once the decision was made to keep the urban areas from former SD26 in current SD26, the racial percentages are explained by where people live.

And the Supreme Court's opinion does not dictate a different factual finding. The Supreme Court questioned the importance of three of the factors that this Court found were involved in shaping SD26 — preserving the core district, county lines, and highways. We do not believe that the Supreme Court has required this Court to disregard those factors, however. As for preserving the core of SD26, the Supreme Court said that core preservation “is not directly relevant to the origin of the new district inhabitants.” *ALBC*, 135 S. Ct. 1257, 1271. It is certainly *indirectly* relevant, though, because once the reasonable, race-neutral decision is made to preserve a core district, new inhabitants can only come from contiguous areas. The Legislature cannot use a precinct from the Birmingham area to change the racial composition of a Montgomery Senate district. County lines seemed of marginal importance to the Supreme Court “since virtually all Senate District 26 Boundaries

departed from county lines.” *Id.* But the portion of SD26 that *does* follow county lines is still explained by that fact. And as for highways, the Supreme Court merely said that the factor “was not mentioned in the legislative redistricting guidelines.” *Id.* at 1271–72. That does not mean, however, that highways are irrelevant, because like rivers, city limits, bodies of water, and other features that are not mentioned in the guidelines, highways divide neighborhoods and communities of interest. Preserving communities of interest *is* in the guidelines. (See SDX 420). And the drafters expressly testified that they split precincts to follow roads and other natural boundaries. (See Tr. 3.184 (“Precinct lines don’t necessarily follow roads and boundaries.”)). The simple fact is that the drafters’ plan for SD26 is *consistent* with race-neutral districting principles, and that is the relevant question.

**3. Additional evidence submitted on remand confirms that the drafters did not subordinate race-neutral considerations.**

At the Supreme Court, the plaintiffs and various *amici* complained about the shape of SD26. But four pieces of new evidence—which were unavailable to the Supreme Court—shed additional light on why SD26 is shaped the way it is. These facts further demonstrate that race did not predominate in the drawing of SD26.

First, we now know that the jagged southern boundary of SD26 is jagged *because it follows precinct lines*. The “peninsula” extending into SD25 along Highway 231 is a single large precinct. (Def. Supp. Ex. 9). Similarly, the piece of SD25 that is partially surrounded by SD26 follows the lines of much smaller

precincts. (Def. Supp. Ex. 9). So, to the extent the district is an unusual shape, it takes that shape because of precinct lines, not in spite of them.

Second, we now know that the drafters had limited options in this area because the incumbent of SD26 and the incumbent of SD25 live within a few miles of each other. (Def. Supp. Ex. 4, 5). In fact, the portion of SD26 that the plaintiffs have always criticized as being an unusual shape is where Sen. Ross, the incumbent for SD26, lives. Eliminating the part of SD26 that the plaintiffs have referred to as a “crab claw” would require splitting a precinct — something plaintiffs claim that they cannot abide — or drawing Sen. Ross out of his district.

Third, we now know that the basic outline of the current map of SD26 also appears in a map of Montgomery County Commission districts. (Def. Supp. Ex. 10). The County Commission has also concluded that the central section of the city around the interstate should be represented separately from the northwestern and southern portions of the city. Indeed, both the ADC’s plan and Sen. Sanders’s plan also include an intrusion of SD25 into a central area that is partially surrounded by SD26. (C47, C48). Like the County and the plaintiffs, the drafters’ map merely recognizes this community of interest.

Fourth, we know that almost the entire population of SD26 comes from a single city, the City of Montgomery. Our Def. Supp. Ex. No. 6 shows each city that is partially or entirely within a Senate District. That exhibit shows that 131,102 of the 136,451 people in SD26 live in the City of Montgomery. (See Def. Supp. Ex. 6.) 98% of the district is explained by this community of interest.

**4. Precinct splits do not show that race predominated.**

Finally, the plaintiffs cannot rely on the existence of precinct splits to establish that race predominated. There were 5 splits in the 2001 plan, and there are 7 in the current plan. (SDX 409, SDX 475). All 7 of the current splits are identified by the plaintiffs. (Doc. 256 at 173–175). These splits do not help plaintiffs meet their burden of proof for two reasons.

First, the plaintiffs have not shown that a significant number of voters were placed in SD26 because of their race. As shown by the spreadsheet for SD26 in Ex. 3, putting those 7 precincts back together lowers the percentage of blacks in SD26 from 75.13% to 73.09%, about 2%. The district remains, as it has since 1990, a district that is over 70% black. If the split-precinct evidence reveals anything, it is that SD26 should naturally have a high black percentage based on the demographics of the area.

Second, if the drafters had wanted to meet their so-called quota, they did not need to split a single precinct. The black population percentage for the unsplit precincts, 73.09%, is *higher* than the so-called “quota” of 72.75%, *i.e.* the percentage of blacks as measured in the 2001 district lines with 2010 Census data. The Legislature cannot have been using splits to reach an artificial “mechanical” goal, when it could have come closer to the goal without a single precinct split. The more reasonable inference is that something besides race explains these precinct splits.

**5. SD26 satisfies strict scrutiny.**

Finally, SD26 satisfies strict scrutiny. The plaintiffs have not proposed any alternative way to draw SD26 that complies with the Constitution and Alabama

law, including the Legislature's guidelines. They have not shown an alternative that addresses SD25's underpopulation or avoids incumbent conflicts. On this record, there is no other way to draw SD26's lines. This district, like the plan as a whole, is narrowly tailored to comply with Alabama's obligations under Section 2 and Section 5 of the Voting Rights Act and other applicable law.

\* \* \*

The Supreme Court said that if this Court had "treated equal population goals as background factors, it *might* have concluded that race was the predominant boundary-drawing consideration" in SD26. *ALBC*, 135 S. Ct. at 1272 (emphasis added). The Supreme Court never said that this Court *must* find that race predominated for purposes of SD26. And this Court should not so find. When the shape of the district is the result of race-neutral changes to other districts (moving SD30 to the north of Montgomery, repopulating SD25 with Crenshaw County and a land bridge, then rounding out SD26 with contiguous areas); when the district has always been over 70% black; and when precinct splits made little difference in the racial composition; when county splits are nowhere in play; and when the alternative plans either make little difference or refuse to comply with  $\pm 1\%$  (or both) the plaintiffs have not proven that race predominated or that the Legislature placed a significant number of people into or out of SD26 account of their race. And on this record, there is no alternative, more narrowly tailored way for the State to have drawn the lines.

**D. East Black Belt (SD 28)**

SD28 reflects the wishes of the incumbent and remained largely unchanged from 2001 to 2012. The black population percentage has also remained similar throughout the years, and all the proposed plans have similar percentages as well. Perhaps for these reasons, the plaintiffs barely addressed SD28 until their present filings. In fact, the Supreme Court's opinion in this case suggests that the plaintiffs waived any claim about SD28 because it was not listed in the Court's chart of district-specific claims that the plaintiffs purportedly made. *ALBC*, 135 S. Ct. 1257 at Appendix A. But even if they preserved a district-specific claim about SD28, the sparse evidence in this record fails to show that race predominated in drawing these district lines.

**1. The drafters made only a few changes to SD28, in cooperation with the incumbent.**

Consistent with the Supreme Court's suggestion in Appendix A to its opinion that the plaintiffs waived a claim about SD28, there are only three bits of trial testimony about this district. First, as Sen. Dial testified, the new district lines were designed to repopulate the underpopulated district, and the drafters developed them to meet the approval of the Democratic incumbent:

I met with Senator Beasley. And his district is basically a minority district and had to grow, and I basically showed him and he and I discussed where he could pick up extra population, realizing that had to continue to be a minority district. And if I remember, he picked up some population in Houston County. I'm trying to remember that. And he assured me that he was okay with that.

(Tr. 1.143).<sup>14</sup>

Second, the ADC's counsel suggested to Randy Hinaman that the drafters instead should have repopulated SD28 with "nothing but white people from Autauga County." (Tr. 3.180). But Autauga County is on the other side of Montgomery County and Elmore County from SD28. (*See* Def. Supp. Ex. 5). Adding white population from Autauga County to SD28 would require significantly altering the lines of multiple districts for the sole purpose of adding white people to SD28, which is the definition of a racial gerrymander.

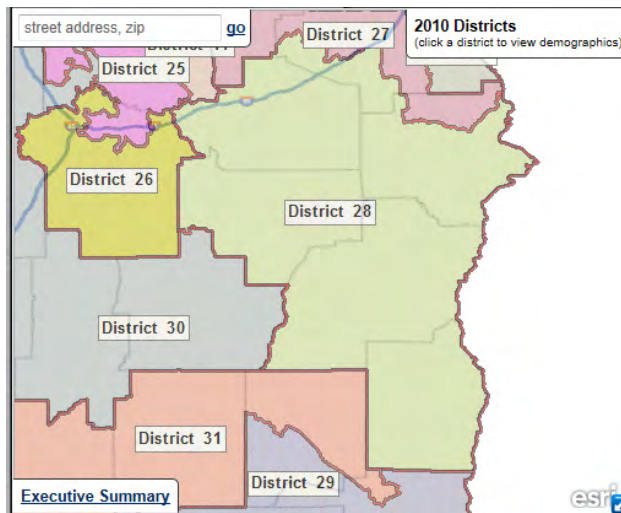
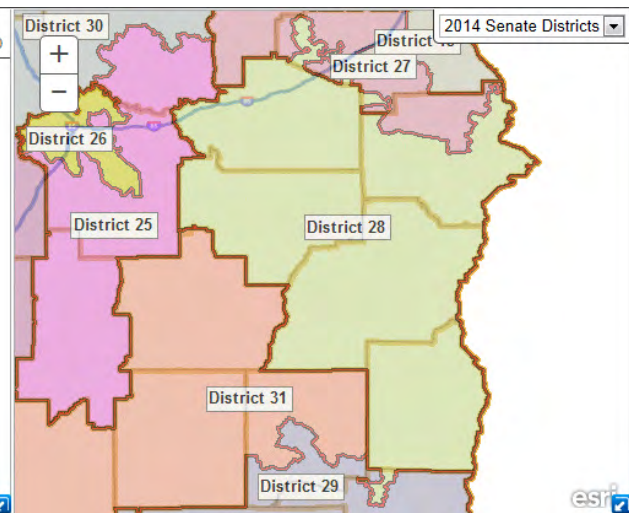
Third, Isabel Rubio testified that Sen. Beasley, the white Democrat representing SD28, appeared at a rally about immigration. (Tr. 4.16). None of these three things help show that race predominated in drawing SD28's lines. Nor have the plaintiffs introduced evidence to help make that showing this time around.

Here is what we know about Senate District 28, in addition to the fact that it was drawn to satisfy the incumbent. Senate District 28 in the current plan changed little from its 2001 lines. In the 2001 plan, SD28 was made up of Henry, Barbour, Bullock, and Macon Counties, plus portions of Russell and Lee Counties. In the 2012 plan, SD28 is still made up of Henry, Barbour, Bullock, and Macon Counties, plus portions of Russell and Lee counties. The only new feature resulted from moving a small portion of Houston County from SD31 to SD28. (SDX 476, 477).

---

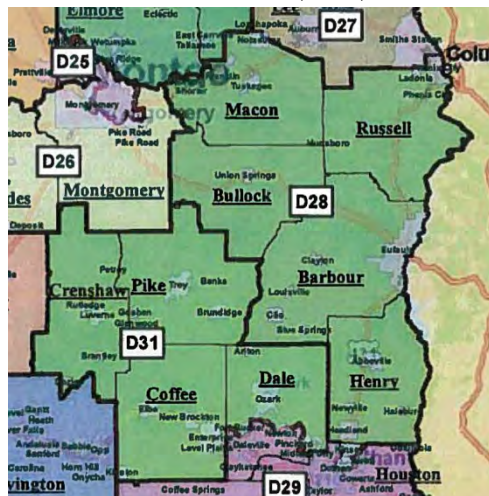
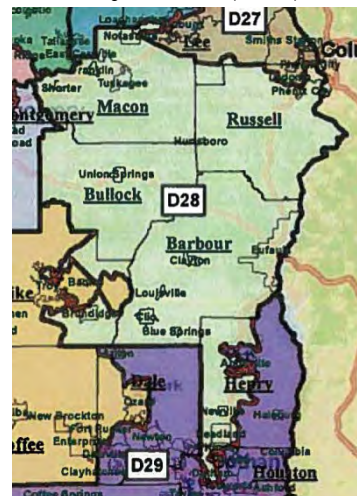
<sup>14</sup> The only reason we know this information is that plaintiffs' counsel asked Senator Dial to discuss his redistricting notebook, which contained records of his meetings with other senators. (Tr. 1.142–43).



**2001 SD28****2012 SD28**

And two of the three alternative plans include similar Houston County additions.

These alternatives are all fairly similar to the plan as passed. The alternative district lines are like the existing lines.

**Sanders Plan (C47)****Buskey Plan (C48)**

All the different versions of SD28 in the plans proposed by the plaintiffs have SD28 as a black-majority district in the same general area of southeast Alabama. The ALBC now proposes a district that is made up of four whole counties (because county lines are what they care about), but their SD28 is underpopulated by 4.75%



and, like the rest of their plan, fails to comply with the Legislature's guidelines. (APSX 26, 27). The Sanders plan has mostly the same whole counties as the ALBC plan, and it differs from the plan as passed by omitting the pre-existing portions of Lee County and taking all of Russell County. (C47). The Sanders plan has the same incursion into Dothan that the challenged plan features. (C47). And the Buskey plan likewise goes into Dothan, but also takes part of Pike County. (C48).

**2. The black population percentage has remained constant over the years and is consistent across alternative plans, reflecting the demographics of the area.**

Likewise, the black population, both percentage and total, remains similar across all plans. All drafters propose a majority-black district between 50% and 60% black:

<b>Black Population Percentages in Various Proposed Senate Plans (and over/under population of the district in each)</b>				
Senate District Number	SDX 400 2012 Plan as Passed	C47 Sanders Plan	C48 Buskey Reap. Plan 2 (ADC Plan)	APSX 27 ALBC Senate Plan 4/4/2015
28	59.83 (0.98)	51.55 (.53)	60.38 (2.19)	50.24 (-4.75)

As a matter of percentages, the plan as passed is neither the highest nor the lowest as compared to the plaintiffs' alternatives (none of which comply with criteria established by the Legislature).

These population percentages reflect the demographics of SD28, which have remained largely unchanged over the years. The district was over 60% black in 1993, 56.5% black in 2001, and is 59.56% black in the current plan:

Senate District Number	Act 2012–603 Total Black Pop. (%)	Overpop.(+) or Underpop.(–) of 2001 District Using 2010 Census Data (%)	2001 Senate Total Black Pop. (%)	1993 Senate Total Black Pop. (%)
28	59.83	-3.80	56.458	61.09

(Doc. 203 at 44) (*citing* APX 7; NPX 310, and NPX 312); *see also* SDX 400, SDX 407, C34).

And the changes to SD28 were a result of the need to repopulate the district in a way acceptable to the incumbent. Some changes were required because SD28 was underpopulated by 3.8%, 5,196 people short of the ideal population of 136,564. (APX 7; SDX 402). The additional population needed to bring SD28 within deviation came mainly from the incursion into Dothan in Houston County. And the testimony at trial was that the incumbent senator “was okay with that.” (Tr. 1.143).

### **3. Unsplitting precincts does not significantly change the black population percentage.**

The plaintiffs point to 18 precincts that are split between SD28 and surrounding districts. There is no evidence about why these precincts were split because there was almost no testimony about SD28 at all. Putting the precincts back together results in a district that is 54.9% black, as compared to its existing 59.8%. (Ex. 3). But that is a difference of 4.9%, or 6,677 persons, which is not a significant number of persons in a hypothetical district with 136,262 persons (4.9%

of the existing district, with a total population of 137,908, is 6,758, a similarly insignificant number). (Ex. 3 at 37).

#### **4. SD28 satisfies strict scrutiny.**

Furthermore, 59.6% is still under the 60-65% figure urged by the black legislators during the redistricting process. Although the plaintiffs have not shown that race was the predominant factor in drawing the lines of SD28, the State had a compelling interest in preserving the ability of SD28's voters to elect the candidate of their choice to comply with both Section 2 and Section 5. When the new plan was drafted, SD28 was barely majority black at 50.98% total black population. (*See* SDX 402). Under the 2001 plan, a white Democrat represented the district. (*See* Tr. 4.16). The new district is one that comes in just under 60%. No one, except for discredited plaintiffs' expert Arrington who had previously testified that 61% was necessary, testified that 51.05% black is sufficient for the black population in SD28 to retain the ability to elect their candidate of choice. The Legislature had a strong basis in evidence to conclude that a district that had previously been majority-black should remain so, and that it should be near 60% when it can be made so by observing traditional districting criteria. The Legislature accomplished this in part with the reasonable decision to include a portion of Houston County, similar to the proposals in the ADC plan and Sen. Sanders' plan. SD28 therefore passes strict scrutiny, even if this Court concludes that race predominated.

### **E. Mobile (SD33)**

SD33's 2012 lines are much like its 2001 lines. The few changes resulted from the need to repopulate the district, and the options for doing so were limited by geography and the wishes of area incumbents. Because Mobile is entirely within Mobile County, there are no county splits. And unsplitting the precincts shows a negligible difference in black population percentage. SD33 also satisfies strict scrutiny because, on this record, there is no alternative way to draw it in compliance with the Constitution and Alabama law, including the Legislature's guidelines.

#### **1. Population shifts required changes with limited options.**

In the 2001 Senate plan, Mobile County was divided by one urban district (SD33), two rural districts (SD34 and SD35), and an incursion by SD22. It is much the same in the current plan, divided by the same three districts and a smaller incursion by SD22. (SDX 476, 477). SD33's lines had to change because of large population shifts in Mobile and Baldwin Counties between 2000 and 2010. Over that decade, SD33 and SD35 lost significant population, while SD34 and SD32 (the latter in Baldwin County) gained significant population:

Senate District Number	Act 2012–603 Total Black Pop. (%)	Overpop.(+) or Underpop.(–) of 2001 District Using 2010 Census Data (%)	2001 Senate Total Black Pop. (%)	1993 Senate Total Black Pop. (%)
32	7.84	<b>13.95</b>	5.839	9.90
33	71.64	<b>-18.05</b>	62.451	65.34
34	12.69	<b>13.82</b>	8.842	8.52
35	19.11	<b>-7.23</b>	31.973	27.40

(Doc. 203 at 44; APX 7; NPX 310, and NPX 312; *see also* SDX 400, SDX 407, C33). SD32 and SD34 had an extra 37,926 people that needed to go somewhere else, while SD33 and SD35 needed an additional 34,527 to bring them to ideal population. (APX 7).

Politics blocked one possible answer for SD33: to absorb population from rapidly-growing Baldwin County, or to bring the Baldwin County district into Mobile County. The testimony at trial was unequivocal that neither delegation wanted the Mobile and Baldwin County districts to cross Mobile Bay:

Q. Did you discuss with Senator Figures and with the other members of the Mobile County and Baldwin County delegations the possibility of extending Mobile districts over into Baldwin County or vice versa?

A. Yes. That was one of the points as we began to work from that district, because her district had to grow also. And so as we began to work on that process, we entertained the opportunity to take part of Baldwin and put it into the Mobile delegation. The Mobile delegation, not that they personally had anything against Senator Pittman, they just did not want to share that opportunity to have another senator come in and be part of their delegation. Senator Pittman -- we looked at one plan where he would take part of Mobile County. ...

The Mobile delegation were not real amenable to taking another senator in. And remember, this plan has to pass the Legislature, so I can't begin to cause dissension so that I don't have the 18 votes I need to pass this. So the opportunity to fix Mobile as we fixed it and to, again, create a minority district that has a population that was not regressed opportunity existed, and that's the way we drew Mobile.

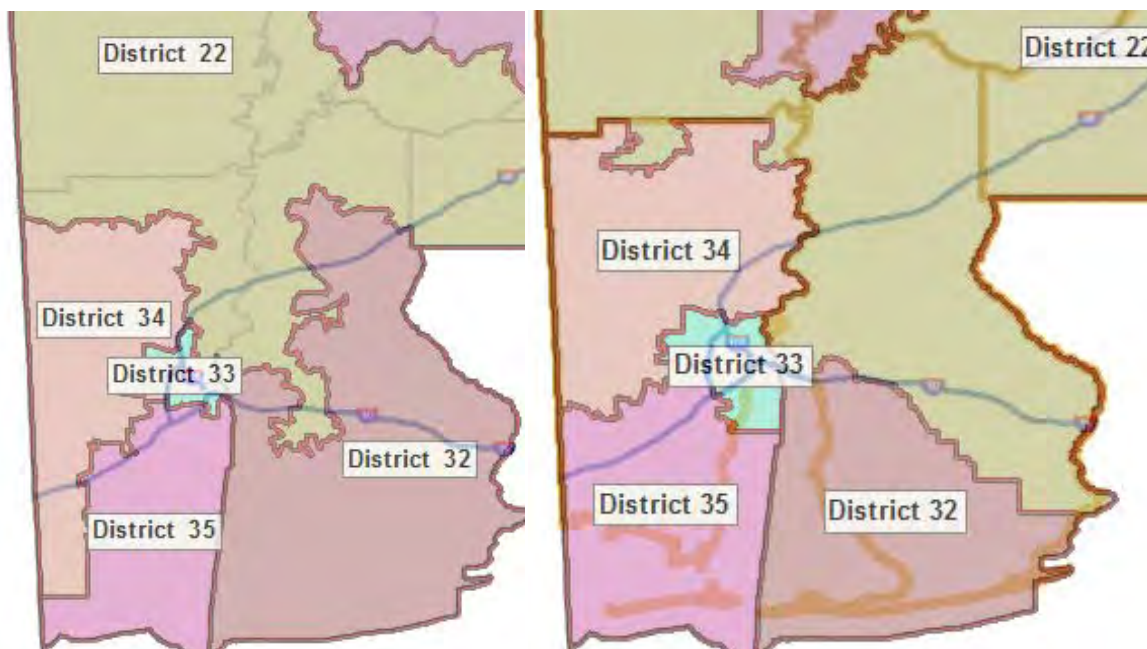
(Tr. 1.41–42) (Testimony of Sen. Dial).

I said, why can't you go over the bay to Baldwin County? But one of the senators from that area didn't want me in their local delegation.

(Tr. 2.47 (Testimony of Sen. Figures); *see also* APX 75 at 58–59, 107–108 (discussing incumbent objections to expanding districts across the bay)).

Instead of crossing the bay, SD22 absorbed population from Baldwin County, which pulled it mostly out of Mobile County and rotated SD34 to the north. SD35 then slid north as well, and SD33 expanded a little to the south. (SDX 476, 477). There were limits to where SD33 could expand. The incumbent in SD35 lived to the west of SD33 (at its southern end), limiting expansion in that direction. (Def. Supp. Ex. 4, 5). And keeping SD33 in Mobile County avoided another county split, kept together the community of interest that is the City of Mobile, and respected the geographical boundaries of Mobile Bay.

**2001 SD33 & surrounding districts      2012 SD33 & surrounding districts**



As a result of these geographically- and politically-driven boundary changes, SD33, which had been in the mid-60s the past two plans, is now 71.64% black. That is

higher than it was before, but as the chart at the beginning of this section demonstrates, the percentage of blacks went up in majority-white SD34 and SD32 as well.

**2. The black population percentage is not evidence of racial predominance.**

The drafters' race-based objectives had nothing to do with SD33's racial percentage. Using 2010 Census figures, SD33 was 64.85% black at the time of redistricting. (SDX 402). The Legislature missed that so-called "target" by more than 7 points. (*See Ex. 2*). There is no evidence that the Legislature set out to *increase* the black percentage in SD33, so whatever drove the end result was not a "target." *Politics* drove the lines: the need to get to 18 votes by satisfying incumbents. And if a district was going through a lot of changes, it is no surprise that a Republican majority chose a Democratic district (SD22) to change significantly by absorbing Baldwin County population instead of extensively altering one of the Republican districts. The racial composition of the resulting districts was determined by where people live.

The plaintiffs' alternative plans are particularly compelling evidence of the *lack* of racial predominance because they achieve different racial compositions only by rejecting the drafters' race-neutral criteria. The ADC mainly says that, instead of expanding to the south, the Legislature should have expanded in a different direction: "[T]he State chose to expand SD33 to the south, rather than to the west. To the west, the census blocks were whiter than they were to the south." (Doc. 258 at 31). They do not say that any traditional districting criteria makes moving west a

better, more rational choice than moving south (and if one existed, they would no doubt point it out). They say simply that the drafters should have repopulated SD33 with white people because, and only because, they are white. Regardless, the map of incumbents that we have included as a supplemental exhibit shows precisely why SD33 could not move to the west: that is where the incumbent for SD34 lived. (*See* Def. Supp. Ex. 4, 5).

In the alternative plans, the one by Sen. Sanders slightly exceeds the black percentage of the plan as passed, while the Buskey and ALBC plans feature a district that is 65.83% and 62.83% black, respectively:

<b>Black Population Percentages in Various Proposed Senate Plans</b>				
Senate District Number	SDX 400 2012 Plan as Passed	C47 Sanders Plan	C48 Buskey Reap. Plan 2 (ADC Plan)	APSX 27 ALBC Senate Plan 4/4/2015
33	71.64	71.83	65.83	62.83

The Sanders plan underpopulates the district by 1.98%. (*See* C47). The Buskey plan keeps SD33 within  $\pm 1\%$ , but only by overpopulating Republican districts SD32 and SD35 by 4.49% and 4.69%, respectively (and by ignoring incumbents' objections to crossing Mobile Bay). The ALBC plan keeps SD33 within  $\pm 1\%$  but overpopulates SD34 by 1.93% and SD22 by 2.16%. (*See* APSX 27). The following are the black population totals for SD33 in the different plans:



<b>Black Population Totals</b>				
Senate District	DX 400 Plan as Passed	C47 Sanders Plan	C48 Buskey Reap. Plan 2	APSX 27 ALBC Senate plan
33	97587	96145	89398	85721

The evidence belies the existence of any so-called “mechanical” goal of maintaining prior percentages, and even if there was such a goal, it did not result in racial gerrymandering in SD33 because the Legislature missed the mark without evidence of any intent to exceed the pre-existing percentage. Sen. Sanders, who presumably did not racially gerrymander, proposed an SD33 with an even higher black population percentage, indicating that the percentage alone is not evidence of racial gerrymandering. And the plaintiffs have pointed to no traditional districting criteria that would have required different boundaries. Instead, they propose alternatives based on adding white people and non-compliant plans that overpopulate Republican districts and ignore incumbents’ objections against crossing the bay.

### **3. Precinct and county splits do not establish racial predominance.**

Precinct splits are not evidence of racial gerrymandering in SD33. The ALBC’s complaints about Mobile County districts center on county splits (although SD33 does not cross county lines) and precinct splits. (*See* Doc. 256 at 183–186). They even mention a precinct split which put 0 blacks and 0 whites into SD33 and which could not possibly have affected the racial composition. (*Id.* at 184). The remaining four precinct splits, if undone, would change the district hardly at all,

taking it from 71.64% black to 70.8% black. (Ex. 3). The precinct splits cannot be blamed for the racial composition of SD33. Plaintiffs have not proven that the Legislature placed a significant number of people into or out of SD33 on account of their race in contradiction to traditional districting criteria.

**4. SD33 satisfies strict scrutiny in any event.**

Finally, SD33 satisfies strict scrutiny. As explained above, our plans are a narrowly tailored way of complying with the undisputed requirements of the Voting Rights Act. The plaintiffs have not proposed any alternative way to draw SD33 and its surrounding districts that complies with the Constitution and Alabama law, including the Legislature's guidelines. Nor have they shown a way to satisfy other criteria, for example, by addressing the concerns of Republican incumbents in surrounding districts. On this record, there is no other way to draw SD33's lines. This district, like the plan as a whole, is narrowly tailored to comply with Alabama's obligations under Section 2 and Section 5 of the Voting Rights Act and other applicable law.

## II. House Districts

### A. Madison County (HDs 19 and 53)

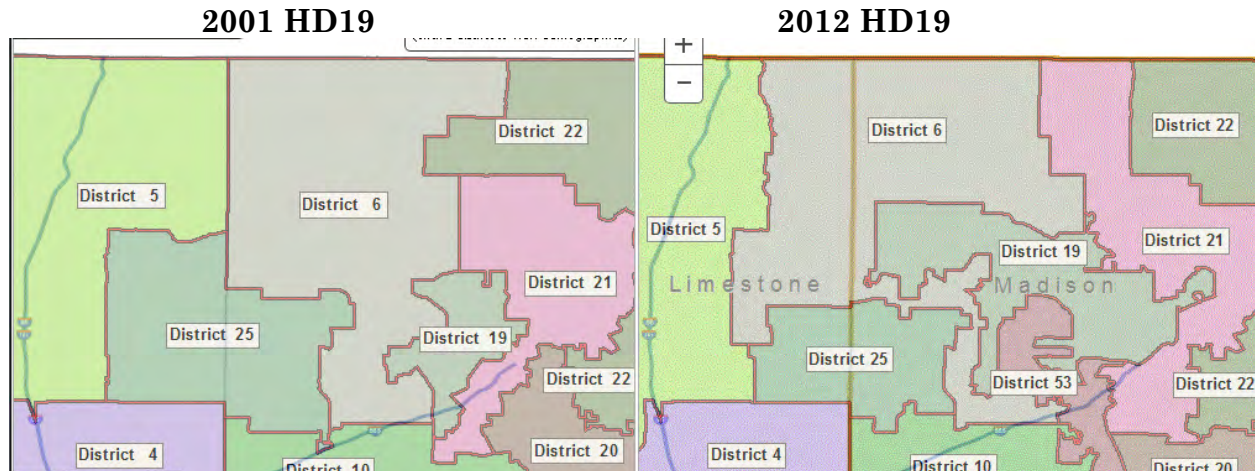
The plaintiffs have not established that the drafters subordinated race-neutral districting criteria to race in HD19 or HD53, both of which are entirely in Madison County. As a preliminary matter, we note that there is no hard evidence in the record about what drove the drafters to include any particular population in these districts. Indeed, the Supreme Court's opinion in this case suggests that the plaintiffs waived any claim about HD19 or HD53. The Court's opinion includes a chart that lists record cites where the plaintiffs made arguments about specific districts, but that chart does not list HD19 or HD53 as districts that the plaintiffs challenged as racial gerrymanders. *See ALBC*, 135 S. Ct. 1257 at Appendix A. Regardless, the sparse evidence in the record about HD19 and HD52 affirmatively undermines the plaintiffs' racial gerrymandering claim.

The 2012 plan significantly changed HD19's borders, but these changes were necessary to allow the creation of a new district in Madison County, i.e., the relocated HD53, after that district's population was used to correct the substantial underpopulation of Jefferson County's districts. (*See* Doc. 203 at 34; *see also* the discussion below of the Jefferson County House Districts). Thus the lower part of old HD19 became the core of new HD53, and new HD19 grew to the northwest. (SDX 479, 480; *see also* Newton Demonstrative Ex. B). Plaintiffs argue that this process involved precinct splits along racial lines, (Doc. 256 at 29–39; Doc. 258 at 48–52), but their conclusory statements are not evidence, and an examination of

new HD19 and the precinct splits themselves does not reveal actions consistent with a racial gerrymander.

First, the new HD19 failed to meet its alleged “target” for black population by a good measure. Under the 2012 plan, HD19 is only 61.25% black, which is well below the “target” of 69.82%. (Ex. 2, citing SDX 403, 406). In fact, this 8.57% drop “is the largest decrease” in the black population of any majority-black House district, as the Newton plaintiffs point out. (Doc. 258 at 50). So if meeting the “target” population is evidence of a racial gerrymander, then HD19 provides no such evidence.

Second, the precinct splits that plaintiffs point to did not result in a significant number of people, or a significant number of blacks or whites, being placed in or out of HD19. Indeed, the splits had only a modest effect on these populations. For example, with the precinct splits, HD19 is 61.25% black, and without them it would be 59.9% black — a minor decrease in black population of -1.3%. (Ex. 3). This minimal effect suggests, rather than a racial gerrymander, a wholesome respect for nondiscriminatory line drawing, which is borne out by comparing the shapes of old and new HD19:



As the maps show, even after part of HD19 was used to help create new HD53, the core of HD19 was preserved and remains in Huntsville, including the residence of the incumbent (and no other legislator was put into this district). Although new HD19 is less compact than its predecessor, owing to the need to incorporate more sparsely populated rural areas into this district, (Tr. 3.7), it remains reasonably compact. For example, it is visibly not even the largest district by land area in Madison County. In other words, the shape of HD19 shows nothing more than an attempt to comply with redistricting guidelines and traditional redistricting criteria. (See C1).

Moreover, the splits themselves betell no racial motive. The ALBC plaintiffs identify a number of precinct splits that they say indicates a racial gerrymander, (Doc. 256 at 29–35), but this analysis is unconvincing. Five of the splits the ALBC challenges are between HD19 and HD53, which are both majority-black districts.<sup>15</sup> (Doc. 256 at 29–35). In two of them (“Ed White Mid Sch” and “Blackburn Chapel

<sup>15</sup> One of these, “Blackburn Chapel CP Ch,” is actually a three-way split between HDs 19, 53, and 6, but the number assigned to HD6 is very small, 145, and we ignore it.

CP Ch”), most of the people, including most black people, are assigned to HD19. (*Id.* at 31–32). In the other three (“Highlands Sch,” “Lewis Chapel CP Ch,” and “St. Luke Missionary Bapt Ch”) the balance favors HD53, which gets most of the population, including most of the black population in each split. (*Id.*) These splits are consistent with efforts to allocate people between majority-black HD19 and its new majority-black neighbor, HD53, and provide no evidence of a racial gerrymander. Of the remaining seven splits, in four of them (“Chapman Mid Sch,” “Ch of Christ Meridianville,” “Grace United Meth Ch,” and “Mad Co Teacher Resource Ctr”), most of the black *and* white population is assigned to majority white districts. (*Id.*) In the other three (“Harvest Bapt Ch,” “Pineview Bapt Ch,” and “Sherwood Bapt Ch”) most of the population, and most of the black population, is assigned to HD19, but a closer look at these show, for example, that while most of the blacks (1,292) in “Harvest Bapt Ch” were put in HD19, the precinct split put nearly double the number of whites (2,093) in that majority-black district. (*Id.*)

Of course, most of the plaintiffs’ alternative plans give HD19 an even higher black percentage than the plan that was passed, so if the Legislature were trying to gerrymander HD19 to hit a “target,” it demonstrably did not do a good job. In three out of four attempts, the plaintiffs failed to produce a plan in which HD19 has a lower black population than the 2012 plan:

HD19 - Black % in Alternative House Plans				
SDX 403 Plan as Passed	C45 McClammy Plan	C42 Buskey Reap. 4 (ADC Plan)	C46 Knight Plan	APSX 36 ALBC Plan
61.25	67.07	67.01	75.39	58.27

The McClammy, Buskey, and Knight plans all propose an HD19 that would be significantly *higher* in black population than HD19 as enacted—approaching and even surpassing the “target” figure of 70% black.

And finally, a look at HD19 as a whole shows that there was not a significant change in its net population:

	<b>Total Population</b>	<b>White Population</b>	<b>Black Population</b>	<b>Net Population Change</b>
<b>(SDX 403) New HD19</b>	45,081	14,733	27,614	
<b>(SDX 406) Old HD19</b>	42,380	10,060	29,590	
<b>w/ 2010 Census Difference</b>		4,673	-1976	2,697

An increase in total population of only 2,697 means that the plaintiffs cannot show that a significant number of persons were placed into or out of HD19 as part of a racial gerrymander (particularly when the population movement includes a net *decrease* in the number of blacks in the district). Even looking behind these numbers does not help the plaintiffs. The ADC’s Supp. Ex. 4 shows that in the course of redistricting, 19,454 people were moved into HD19, and 16,753 were moved out of it. But instead of a racial gerrymander, these results are explained by what happened between HD19 and HD53: a large part of HD19 was given to (or moved out to) new HD53, and the northwestern edge of HD19 was scooted over to compensate, and thus a large replacement population was moved into HD19. These population shifts were the result of the creation of a new district and do not provide evidence of a racial gerrymander.

For the same reasons, the plaintiffs have not shown that traditional districting criteria were subordinated to race in the drawing of HD 53. The splits identified by the plaintiffs in HD53 do not indicate a racial gerrymander. The ALBC points out that in nine precinct splits between HD53 and majority white precincts, a total of 9,004 blacks and 1,160 whites were placed in HD53. But our efforts show that unsplitting all the precincts in HD53 would *raise* the black percentage slightly, from 55.8% to 55.9%. (Ex. 3).

In any event, HD53 is an entirely new majority black district in Madison County. Although a significant number of persons were moved into HD53, that is an inherent part of creating a new district. It is compact, preserves an urban community of interest, and its boundaries follow readily recognizable road or water features. It certainly cannot be described as “so highly irregular that, on its face, it rationally cannot be understood as anything other than an effort to ‘segregat[e] ... voters’ on the basis of race.” *Shaw v. Reno*, 509 U.S. 630, 642 (1993). There is no evidence that race predominated over other criteria in determining who was placed in that district.

In the 2001 plan, there was one *Shaw*-compliant black-majority district in Huntsville. There are now two, one that is 61.25% black and one that is 55.7% black. For all the reasons discussed above, the plaintiffs have not shown that a significant number of persons were placed in HD19 or HD53 on account of race, or that race predominated in a way that conflicts with traditional districting criteria.



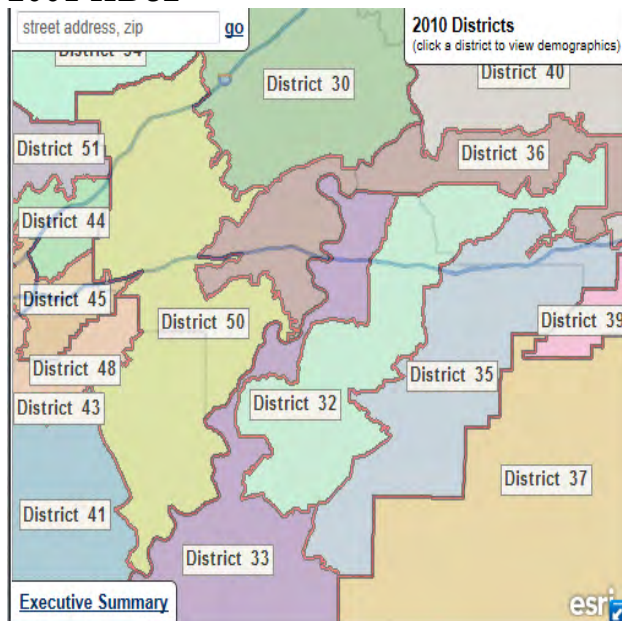
Even if this Court finds otherwise, the districts, at 61.25% and 55.83% black, clearly survive strict scrutiny.

## B. House District 32

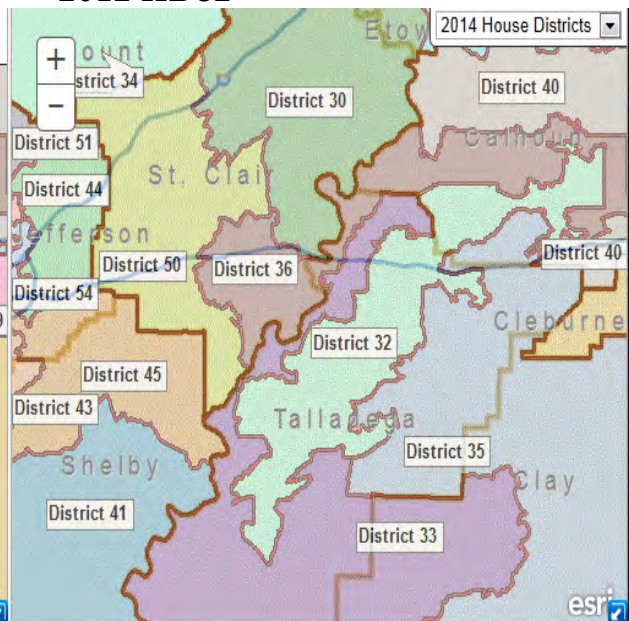
There was practically no evidence at trial about why HD32 was drawn the way it was. The sole mention of HD32 at trial occurred in the cross-examination of Randy Hinaman by ADC's counsel, when HD32 was mentioned in connection with SD11. (Tr. 3.173–174). But no one was ever asked about the drawing or composition of HD32.

Still, the evidence in the record undermines the plaintiffs' racial gerrymandering claim. As with every other black-majority district, HD32 was underpopulated. But the drafters preserved the core of the district and added contiguous population where it could be found. The following maps show the old district and the new district:

**2001 HD32**



**2012 HD32**



In the former plan, HD32 was long and narrow, made up of a stretch of Talladega County and a stretch of Calhoun County. In the current plan, HD32 is again somewhat long and narrow, made up of a stretch of Talladega County and a stretch

of Calhoun County. (SDX 479, 480). The Legislature protected the incumbent, even though the incumbent lives on the northeastern border. (Def. Supp. Ex. 2). To add population, the Legislature expanded the district by taking it slightly further south and stretching to the east in two locations, but many of the boundaries are the same as in the prior plan.

To the extent the racial demographics of the district remained the same, this is mostly due to demographic reality, not gerrymandering. The demographic history of HD32 is set out below and shows that it has remained around 60% black over the last 20 years.

SDX 403 2012	SDX 406 2010/2001	2010 Dev.	SDX 411 2001	SDX 419 2000/1993	2000 Dev.	SDX 417 1993
60.05	59.34	-14.76	59.598	63.490	-15.567	63.93

Moreover, the demographics of HD32 do not differ substantially from its demographics in the plaintiffs' alternate plans:

SDX 403 2012	C45 McClammy	C42 Buskey	C46 Knight	APSX 36 ALBC
60.05	58.40	56.68	21.65	52.35

Except for the Knight plan, which is so different across the board that it provides no meaningful comparison, each of the alternatives features an HD32 with roughly the same shape and population.

Both sets of plaintiffs point to precinct splits to support their racial gerrymandering claims, but they target different splits. The precinct splits that are the focus of the ADC, shown in Doc. 258-1 at 1–2, result in moving population that is 57.75% black (14,467/25,051). The splits that are ALBC's focus, (Doc. 256 at 39–

40), resulted in the addition of population that is 62.74% black (28,367/45,213). But there is no reason to believe that those splits were in *contravention* of other redistricting criteria, instead of consistent with them.<sup>16</sup> Indeed, the plaintiffs' counsel recognized at trial that the black community in Talladega County is a "community of interest" that, he claimed, should have been placed in a single district in the Senate plan. (*See* Tr. 3.174). It is passing strange that the plaintiffs should argue that the black population in Talladega County is a community of interest for the Senate plan, but not a community of interest for the House plan.

And, in any event, the splits fail to show that the drafters moved a significant number of voters into HD32 based on their race, as opposed to another factor. There is no evidence about the precinct splits beyond the bare numbers. When the Legislature maintained a district very close to its prior form, protected the incumbent, and included the same counties, the precinct splits alone are insufficient to show that race predominated. Even if race predominated, a 60.05% black district satisfies strict scrutiny.

---

<sup>16</sup> As we have shown in our split-precinct chart, eliminating all splits would likely result in a district that is 53.40% black. (Ex. 3). Any suggestion that a 53.40% black population in Talladega is sufficient to elect the minority's preferred candidate is unsupported in the record.

### C. The Birmingham House Districts (HDs 52, 54-60)

Although the plaintiffs have made numerous claims about the Birmingham House districts, they introduced very little evidence about why any particular district was drawn the way it was. We know only three things about Birmingham.

First, we know that the *Republican*-controlled Legislature solved the underpopulation problem in Birmingham by eliminating the district of a *Democratic* representative that the drafters were told intended to retire, and who later died. (Doc. 203 at 52; APX75 at 132). At the time of the 2010 Census, the majority black House districts in Jefferson County were incredibly underpopulated. The 2010 Census showed that the black-majority House districts in the Birmingham area were underpopulated by more than 76,000 people, which was approximately enough for 1½ House districts. (SDX 406; Doc. 203 at 43).

#### Underpopulation of Birmingham House Districts (2001 Districts with 2010 Census Data)

District	Population	Target Deviation	% Deviation
52	43,159	-2,362	-5.19
53	35,378	-10,143	-22.28
54	34,905	-10,616	-23.32
55	35,572	-9,949	-21.86
56	41,064	-4,457	-9.79
57	36,199	-9,322	-20.48
58	37,443	-8,078	-17.75
59	32,838	-12,683	-27.86
60	36,704	-8,817	-19.37
		<b>Total: -76,427</b>	

(SDX 406).

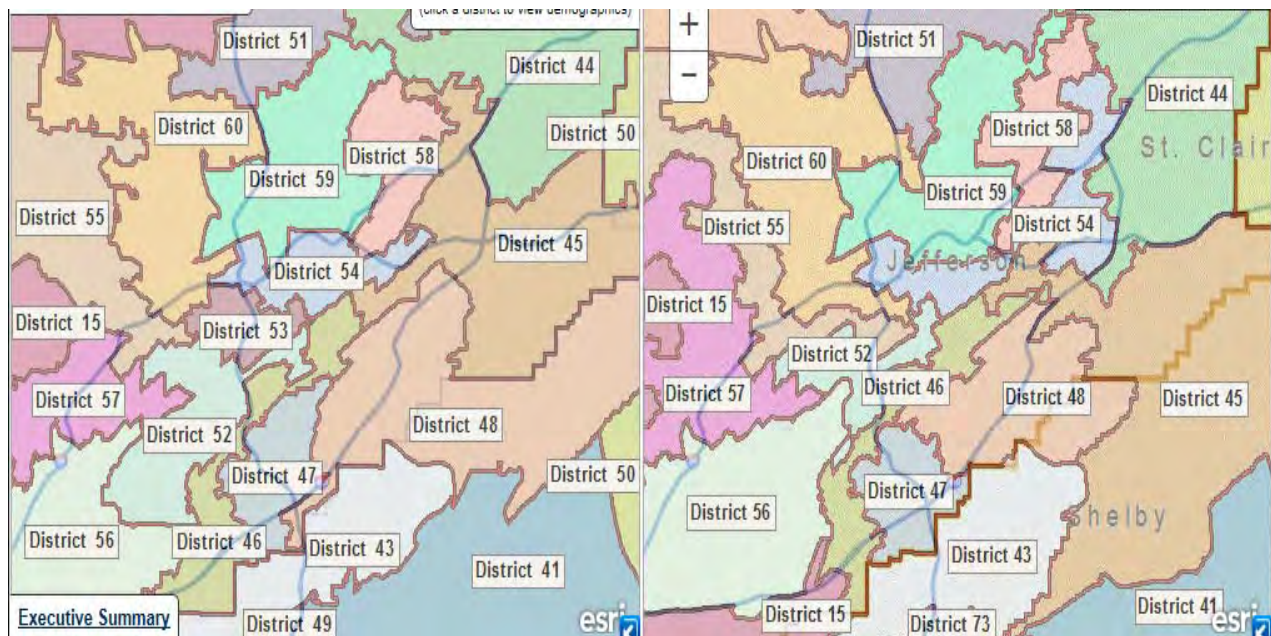
The underpopulation should have been no surprise. After all, in the 2001 House plan, these districts were underpopulated by a collective 29.27% (SDX 411),

and by a collective 42.19% in the 1993 House plan (SDX 417). Thus, they started in the hole and did not grow proportionally between 2000 and 2010.

The drafters of this plan solved this problem by drawing one less majority-black district in the Birmingham-area—choosing to eliminate HD53, a centrally-located district with a seriously ill incumbent. With the elimination of HD53, there were some 35,378 people to redistribute, the majority (55.70%) of whom were black. (SDX 406 at 5). HD53 lay south of I-20 and largely west of the Red Mountain Expressway in Birmingham. As a result, the redistribution had to work from that location. In that regard, the maps show that HD53 in the 2001 plan was absorbed into HDs 52, 59, and 60, all of which it was contiguous to in the 2001 plan. (See SDX 479, 480.)

#### 2001 Birmingham House

#### 2012 Birmingham House



This Court has already concluded that neither the ALBC nor the ADC have “offered any evidence that the Legislature could have drawn another majority black-district



for either the House or the Senate as part of a statewide plan with an overall deviation in population of 2 percent.” (Doc. 203 at 110). This Court also rejected the Plaintiffs’ claims of dilution by packing for the same and another reason. (*Id.* at 112–17).

Second, we know that these districts merely reflect the demographics of the local area. These districts have historically been over 60% black, often over 65% black, and remain so in the current plan. As discussed above in the section on the Birmingham Senate Districts, the districts in this part of Jefferson County are going to have a high percentage of blacks no matter what a drafter does because of where people live and the concentrations of people in those municipalities. And the districts with the highest concentrations are, for the most part, surrounded by other majority-black districts. HD55, for example, shares borders with majority-black HD52, 57, and 60, and only a small shared border with majority-white HD16. HD55 is 73.55% black because that area of urban Jefferson County is 73% black.

Third, we know that the incumbents of HD54, HD58, and HD59 were directly involved in drawing their districts, and the drafters accepted their revisions. (Tr. 3.135-37, 230-33.) With one exception for HD53, the black-majority House districts in the Birmingham area all preserve incumbents. And the various alternative plans contain districts much the same as in the challenged plan:

Dist. No.	SDX 403 2012 Plan as Passed	C45 McClammy Plan	C42 Buskey Reap. 4 ADC Plan	C46 Knight Plan	APSX 36 ALBC Plan
52	60.13	62.27	61.34	54.07	57.42
54	56.83	31.46	31.40	58.72	61.06
55	73.55	62.92	66.66	64.03	59.44
56	62.14	61.06	58.16	54.02	61.13
57	68.47	62.27	61.89	60.27	66.10
58	72.76	66.20	76.98	61.09	62.60
59	76.72	66.62	64.85	61.27	60.01
60	67.68	62.26	65.38	59.55	56.90

There are differences, of course. The McClammy and Buskey plans would have gutted the district of a white democrat (HD54, represented by Patricia Todd). And the alternatives try to keep HD53 in the area, while disregarding  $\pm 1\%$ . But for most, the districts as passed are in line with at least some of the alternatives.

We turn now to some additional district-specific evidence concerning these districts, including precinct splits.

### **1. House District 52**

The plaintiffs' racial gerrymandering claims directed at HD52 should be denied for two district-specific reasons, and because the districts meet strict scrutiny.

First, the best evidence is that the demographics of the area controlled the population of the district, and not the other way around. The demographics of the legislative plan are similar to the demographics of the plaintiffs' alternate plans, even though they reject the Legislature's race-neutral districting criteria. HD52 in



the legislative plan is 60.13% black; the percentage is higher in the McClammy plan (62.27%) and the Buskey plan (61.34%). The ADC incorrectly states that HD52 was adjacent to the “overpopulated” HD56 in the 2001 plan. (Doc. 258 at 58). But HD56 is another of the black-majority House districts, and, while it was adjacent to HD52, it was underpopulated by 9.79%. (SDX 406).

Second, there is no real evidence that race predominated over other criteria. The ADC Plaintiffs identify two split precincts which they contend support their claim of racial gerrymandering. (Doc. 258 at 58, 258-1 at 2). But those precincts are both majority-white, and the number of black residents is insufficient to affect the demographics of either district. The demography of those precinct splits is as follows:

		White	Black
Birmingham Botanical Garden	HD52	380	4
	HD46	<u>590</u>	<u>8</u>
Total		970	12
Shades Cahaba Elementary	HD52	1078	69
	HD46	<u>2583</u>	<u>100</u>
Total		3661	169

The plaintiffs’ reliance on precinct splitting also fails because the effect of unsplitting all of the split precincts in HD52, including the Birmingham Botanical Garden and Shades Cahaba Elementary precincts, while maintaining the overall deviation for HD52, would be to *increase* the percentage of minority population from 60.13% to 64.50% of the total. (See Ex. 3).

Finally, with a minority population of at 60.13% of the total, the district satisfies strict scrutiny.

## **2. House District 54**

The plaintiffs' racial gerrymandering claims directed at HD54 should be denied for three district-specific reasons and because the district satisfies strict scrutiny. First, the district was drawn to satisfy the incumbent, whose district was largely preserved. Second, the demographics of the legislative plan are similar to the demographics of the plaintiffs' alternate plans, even though the plaintiffs' plans do not comply with the population deviation. Third, the precinct splits the ADC identify show that more white voters overall went into each of the related districts, and unsplitting the precincts increases the black population percentage of HD54. Fourth, with a minority population that is 56.83% of the total, HD54 clearly satisfies strict scrutiny.

First, HD54's incumbent helped draw the district. The record reflects that Hinaman helped Rep. Patricia Todd, the incumbent in HD54, work out changes to her district with Rep. Oliver Robinson (HD58) and Mary Moore (HD59). (Tr. 3.135-137, 230-333). In addition, then-Rep. McClendon's notebook reflects that portions of HDs 45, 58, and 59 were moved into HD54 per these legislators approval. (SDX 459 at 122).

Second, as shown below, the minority population of the legislative plan (56.83%) is not significantly different from the VAP-based ALBC plan submitted

before trial (53.94% black).<sup>17</sup> (See APX 21). That suggests that the demographics of HD54 merely match the demographics of the area. The McClammy plan (31.46% black) and Buskey plan (31.40% black) do not provide any basis for comparison because those plans intentionally preserve 8 Democratic districts in Birmingham, partially gutting the black population of HD54 to repopulate the majority-black districts.

Third, the precinct splits depicted in the ADC's appendix contradict the ADC's arguments about them. (Doc. 258 at 59, Doc. 258-1 at 3). The ADC focuses on three split precincts: "Clearview Bapt Ch," "Irondale Sr. Cit Bldg," and "Mountain View Bapt Ch." (Doc. 258-1 at 3). And they characterize the splits in HD54 as having "a pattern in which black persons were predominantly moved into HD54 and whites into HDs 44 and 45." (Doc. 358 at 59). But in these precincts, the total whites (12,860) far exceeded the total blacks (6,496). (Doc. 258-1 at 3). As a result, the only pattern here shows that more whites were allocated to all the relevant districts. The only split where blacks exceeded whites was the portion of "Irondale Sr Cit Bldg," but those *black* voters were placed into the *majority-white* district. (*Id.*) And unsplitting the precincts in HD54 would increase the black population percentage from 56.8% to 62.4%. (Ex. 3).

Finally, HD54, at 56.83% black, clearly meets strict scrutiny because it is under 65% black and the record reflects no alternative way to draw its lines while complying with applicable law, including the Legislature's guidelines.

---

<sup>17</sup> The post-remand ALBC plan has a district 54 that is 61.06% black. (APSX 36).

### 3. House District 55

As with most of the Birmingham districts, there is very little evidence about HD55. We know three things about HD55 that undermine plaintiffs' racial gerrymandering claims.

First, the percentage black population of HD55 has always been growing. When the 2000 Census results were loaded into the 1993 House plan, the minority population was 76.27% of the total. (SDX 419). The 2001 drafters produced a district with a minority population that was 67.772% of the total (SDX 411), but the district was 73.55% black when the 2010 Census data was loaded into its lines, (SDX 406), and it remains 73.55% black. (SDX 403). The population of this portion of Jefferson County has been becoming more and more black. HD55 is almost entirely bordered by other majority-black districts.

Second, we know from Rep. McClendon's notebook that he had conversations with incumbent legislators about HD55. That notebook reflects that, because of those conversations, portions of HD15 and a portion of HD60 were added to HD55. (SDX 459 at 123, 129).

Third, we know that undoing the precinct splits for HD55 would have a *de minimis* effect on the black population. The ADC plaintiffs say that 10 precincts were split, but they did not bother to identify them in their appendix. (Doc. 258 at 59, Doc. 258-1 at 3). According to the ALBC plaintiffs, nine precincts were split. (Doc. 256 at 55). And both sets of plaintiffs agree that all the splits occurred between majority-black districts. (*Id.*; Doc. 258 at 59). This is not "evidence" of anything, much less evidence that the drafters split precincts on the basis of race.

We have been unable to unsplit all the precincts in HD55 while keeping the total population within  $\pm 1\%$  of an ideal district, but even unsplitting them without regard to the deviation reduces the black population *by a tenth of a percent*. (See Ex. 3).

Finally, we know that HD55 meets strict scrutiny. Although HD55 is 73% black, the plaintiffs have never suggested that HD55 could be drawn differently as part of a plan that meets the undisputed requirements of applicable law, including the Voting Rights Act and the Legislature's guidelines.

#### **4. House District 56**

The plaintiffs' racial gerrymandering claims directed at HD56 should be denied for two district-specific reasons and because it meets strict scrutiny.

First, the district's population merely reflects the demographics of the area. HD56 is 62.14% black, less than the district's population under the 2001 and 1993 plans. This population (62.14%) is not significantly higher than that in the McClammy plan (61.06%), the Buskey plan (58.16%), or the ALBC plan (61.13%). That suggests that the plaintiffs cannot do significantly better with HD52 than the Legislature did.

Second, our chart shows that eliminating the precinct splits would have a negligible effect on the district. Although we do not know how it would affect surrounding districts, eliminating the splits in HD56 would reduce the black percentage by 0.08%. (See Ex. 3).

Finally, at 61% black, the district meets strict scrutiny.

## 5. House District 57

Then-Rep. McClendon's notebook reflects the movement of a portion of HD15 and a portion of HD56 into HD57. (*See* SDX 459 at 125). In the district that resulted from those moves, the black population of HD57 is slightly higher than Hinaman's so-called target. (Ex. 2).

The ADC complains about the splitting of the Pleasant Grove First Baptist Church precinct. (*See* Docs. 258 at 60, 258-1 at 4). But the effect of unsplitting all of the split precincts in HD57, including the Pleasant Grove First Baptist Church precinct, and maintaining the overall deviation for HD57, would be minimal, moving the black percentage from 68.5% to 66.6%. (*See* Ex. 3). It would result in the net movement of only 289 black residents from HD57. (*Id.*)

## 6. House District 58

The black population of HD58 is 72.76%, which is more than 5% *below* the drafters' alleged target. (Ex. 2). The plaintiffs cannot cite the supposed "mechanical" targets as evidence of a gerrymander for HD58.

The evidence at trial also shows that this district was drawn to suit the incumbent. The record reflects that Hinaman helped Rep. Robinson, the incumbent, work out changes to his district with Rep. Patricia Todd (HD54) and Mary Moore (HD59). (Tr. 3.135-137, 230-33). As a result, HD58 retained more than 30,000 of its residents (some 67% of the ultimate total), (*see* ADC Supp. Ex. 4), and preserved an opportunity for its incumbent, Rep. Oliver Robinson, to retain his seat.

In addition, HD58 has been growing in black population because of demography. Loading Census data into the previous plans shows that the minority population was 77.86% when the 2010 Census results were loaded into the 2001 plan, and 74.163% when the 2000 Census results were loaded into the 1993 plan. (SDX 406, SDX 419).

The ADC asserts that five precincts were split in a racial pattern, (Doc. 258 at 62), but only *two* of them are included in the ADC's brief (Doc. 258-1). And those two fail to prove the ADC plaintiffs' claim because relatively few people moved into HD58 as a result of the precinct split, and both precincts are substantially majority-white. A total of 1,153 people went into HD58, and 7,548 went into the neighboring white-majority district. (Doc. 258-1 at 5). In each split but one, more white residents were moved into either district than black. The only exception is for the HD58 portion of "Pinson United Methodist," but the difference is only 234 people.

The precinct breakdown from Doc. 258-1 is reworked below:

<b>Precinct</b>		<b>White</b>	<b>Black</b>
Clearview Baptist Church	HD58	487	232
	HD44	<u>3496</u>	<u>801</u>
	Total	3983	1033
Pinson United Methodist	HD58	100	334
	HD44	<u>2694</u>	<u>557</u>
	Total	2794	891

In other words, the split precinct data show that people—of whatever race—were being moved into under-populated HD58 to bring it within  $\pm 1\%$  of ideal population.

The effect of unsplitting all of the split precincts, including the Clearview Baptist Church and Pinson United Methodist Church precincts, and maintaining the overall deviation for HD58, would be minimal. The percentage of minority population would be reduced from 72.76% to 71.30% of the total, and the net change in black residents would be only 327 fewer. (*See* Ex. 3).

Finally, this district meets strict scrutiny because the plaintiffs have never suggested an alternative as part of a plan that would meet the undisputed requirements of the Voting Rights Act.

## **7. House District 59**

As noted above, HD59 increased in population by picking up portions of HD53 that were majority black. The plaintiffs have not shown that race predominated, and the district meets strict scrutiny in any event.

First, the evidence at trial established that new district was drawn to accommodate its incumbent. The record reflects that Hinaman helped Rep. Mary Moore, the incumbent in HD59, work out changes to her district with Rep. Patricia Todd (HD54) and Oliver Robinson (HD58). (Tr. 3.135-137, 230-33). In addition, then-Rep. McClendon's notebook reflects that portions of HDs 51 and 58 were moved into HD59. (SDX 459 at 128).

Second, the black population percentage of the new district is nowhere close to the percentage of the old district. The old district was 67.03% black, with the 2010 figures in the 2001 district lines. (SDX 406). The new district is 76.72% black. (SDX 403). There was apparently no "target" at work here.



Third, the evidence of precinct splitting does not help establish that race predominated. The ADC points to the splitting of the “Pinson United Methodist Church” precinct as evidence of race predominating. (*See* Doc. 258-1 at 4). But the effect of unsplitting all of the precincts in HD 59, including the Pinson United Methodist Church precinct, and maintaining the overall deviation for HD 59, would be to *increase* the minority concentration of that district. The percentage of the district’s population that is black would *increase* from 76.72% to 77.6%. (Ex. 3).

Finally, even if race predominated, the district would meet strict scrutiny because the plaintiffs have never suggested an alternative as part of a plan that would meet the undisputed requirements of the Voting Rights Act.

#### **8. House District 60**

There is very little evidence about HD60. The new district preserved the core of the old district and protected its incumbent, Rep. Juandalyn Givan. Some 80% of the old district’s population (36,309 of the approximately 45,000 people in an ideal House district) stayed in the new district. (ADC Supp. Ex. 4). Then-Rep. McClendon’s notebook reflects that a portion of HD55 was moved into HD60 to bring it to ideal population. (SDX 459 at 129).

Precinct splitting cannot serve as the basis for a racial gerrymandering claim. The ADC points to the splitting of the Fultondale Senior Citizens Center and Gardendale Civic Center precincts, both of which are large and majority-white. (*See* Doc. 258-1 at 6). But the effect of unsplitting all of the split precincts in HD60, including the Fultondale Senior Citizens Center and Gardendale Civic Center

precincts, and maintaining the overall deviation for HD60, would be to *increase* the percentage of the population that is black from 67.68% to 72.5%. (*See* Ex. 3).

Finally, even if race predominated, the district would meet strict scrutiny because the plaintiffs have never suggested an alternative as part of a plan that would meet the undisputed requirements of the Voting Rights Act.

\* \* \*

In sum, the plaintiffs have not proven that race predominated in the drawing of the Birmingham House districts. Although the plaintiffs have provided no compliant alternative, the plan as passed is in line with the districts they propose; the precinct splits they complain about made little, if any, difference; the incumbents were instrumental in drawing the districts; and, in the end, the resulting racial composition is a result of the high concentrations of black people in Birmingham and the municipalities to its north and west. Regardless, these districts meet strict scrutiny because there is no alternative plan for Birmingham or the State that shows that the Legislature could have complied with the undisputed requirements of the Voting Rights Act.

**D. West Black Belt (HDs 67-72)**

We are not aware of any witness or lawyer at trial mentioning HD67, HD68, HD69, HD70, HD71, or HD72. This group of neighboring majority-black districts in west Alabama was under-populated in the 2001 plan. In addition, most of their constituent counties lost population from 2000 to 2010. Not surprisingly, then, the 2010 Census showed that each district's total population was far below the 2012 plan's ideal population of 45,521 for House districts and that, as a group, these districts needed 44,681 people to reach ideal population:

Dist. No.	Ideal Pop.	2010 Pop.	Deviation No.	Deviation %
67	45,521	37,878	-7,643	-16.8%
68	45,521	36,234	-9,287	-20.4%
69	45,521	37,572	-7,949	-17.5%
70	45,521	39,253	-6,268	-13.8%
71	45,521	38,094	-7,427	-16.3%
72	45,521	39,414	-6,107	-13.4%

(SDX 459 at 001482 (chart showing population deviation of 2001 districts with 2012 data)).

The 2010 plan corrected these deviations and brought the districts to within 1% of ideal population by the only means possible. The plan adds new counties to the cores of the preexisting districts.

Dist. No.	Counties in 2012 and constituent population	Counties in 2001 and constituent population	Counties in 1993
67	Dallas-43,820, Perry-1,258	Dallas-40,448	Dallas
68	Baldwin-851 Clarke-12,158 Conecuh-8,286 Marengo-6,198 Monroe-15,322 Washington-2,254	Choctaw-5,601 Clarke-15,994 Conecuh-5,617 Marengo-2,939 Monroe-10,400	Choctaw, Clarke, Conecuh, Marengo, Monroe,

Dist. No.	Counties in 2012 and constituent population	Counties in 2001 and constituent population	Counties in 1993
69	Autauga-7,318	Autauga-7,877	Dallas,
	Lowndes-11,299	Dallas-5,917	Lowndes,
	Montgomery-15,190	Lowndes-13,473	Wilcox
	Wilcox-11,670	Wilcox-13,183	
70	Tuscaloosa-45,970	Tuscaloosa-42,318	Tuscaloosa
71	Choctaw-3,461	Greene-9,974	Greene,
	Greene-4,159	Marengo-13,048	Marengo,
	Marengo-4,552	Sumter-14,798	Sumter
	Pickens-4,552	Tuscaloosa-2,485	
	Sumter-9,268		
72	Tuscaloosa-19,356		
	Bibb-8,280	Bibb-6,479	Hale,
	Greene-4,874	Hale-17,185	Marengo,
	Hale-15,760	Marengo-6,552	Perry,
	Marengo-4,604	Perry-11,861	Tuscaloosa
	Perry-9,333		
	Sumter-4,495		

(SDX 404 (county splits in 2012 plan); C30 (county splits in 2001 plan); SDX 418 (county splits in 1993 Reed Buskey plan)).

The above chart shows the counties in HD67-72 in the 2010, 2001, and 1993 plan. Counties that were added in a given redistricting cycle are highlighted. For example, looking at District 69, the chart shows that in the 2012 plan Montgomery County was added, bringing 15,190 people needed to repopulate District 69, just as in the 2001 plan it was necessary to add almost 8,000 people from Autauga County for the same purpose. Overall, the chart shows that, notwithstanding the need to find approximately 45,000 people to add to these districts, their constituent counties have remained stable over time, with additional counties added in 2001 and 2012 as needed to meet the requirement of one person, one vote.

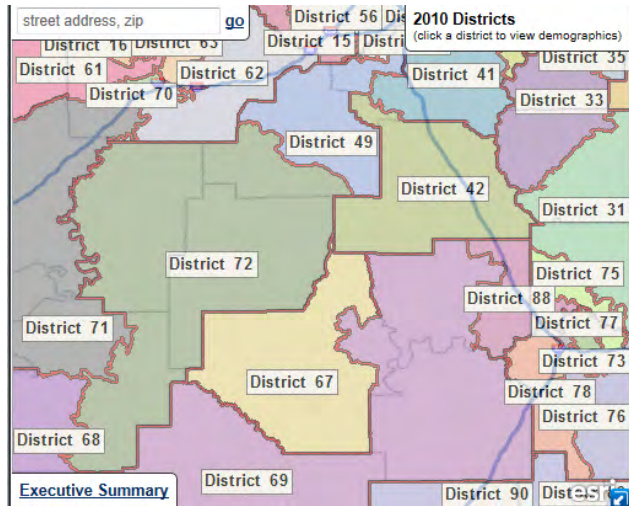
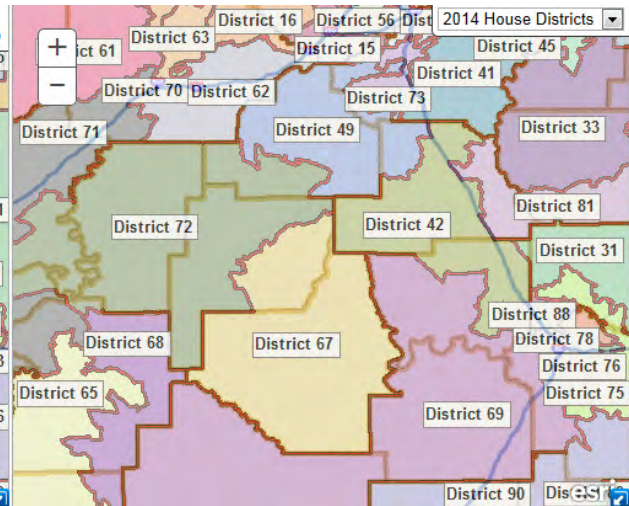
Similarly, the black populations of these districts have been relatively stable since 1993:

	<b>SDX 403</b>	<b>C30</b>	<b>SDX 418</b>
<b>Dist. No.</b>	<b>2012 Total Black Pop. %</b>	<b>2001 Total Black Pop. %</b>	<b>1993 Total Black Pop. %</b>
<b>67</b>	69.15	63.4	63.5
<b>68</b>	64.56	62.2	63.6
<b>69</b>	64.21	65.3	63.3
<b>70</b>	62.03	62.8	64.6
<b>71</b>	66.90	64.2	66.7
<b>72</b>	64.60	60.7	65.4

This consistency is a direct result of the fact that these districts consist primarily of majority-black Black Belt counties. The above charts show that these districts have remained much the same since 1993, with additions made as needed to bring each district into allowable deviation from ideal population. A closer look at each district follows.

### **1. House District 67**

There is no meaningful evidence about HD67 in the record, and the Supreme Court could not identify anywhere in the record that the plaintiffs made a racial gerrymandering claim with respect to HD67. We know, however, that HD67 is compact, preserves the core of the existing district, follows county lines for most of its border, obviously protects the incumbent, and preserves communities of interest. The following maps show that HD67 is essentially a one-county district:

**2001 HD 67****2012 HD67**

In 2001, HD67 was wholly within Dallas County. To find the population to bring HD67 within  $\pm 1\%$  of ideal population, the 2012 plan gave the district all of Dallas County, and about a third, geographically, of Perry County. The result is a compact, almost textbook-perfectly-shaped district. Of course, the district lines include precinct splits, but they make no material difference in the district's racial composition. With the precinct splits, the district is 69.15% black, and without them, it is 68.9% black — a minimal difference of only 0.25%. (Ex. 3).

The population of HD67 is the result of demographic facts, not an attempt to meet a prescribed level of black population. All the alternative plans, even with  $\pm 5\%$  deviation, also proposed that HD67 be about 69% black:

<b>Black Population Percentages In Various Proposed House Plans</b>					
Dist. No.	SDX 403 2012 Plan as Passed	SDX 470 McClammy Plan	C45 Buskey Reap. 4 (ADC Plan)	C42 Knight Plan	APSX 36 ALBC Plan
67	69.15	69.2	68.6	69.4	69.4

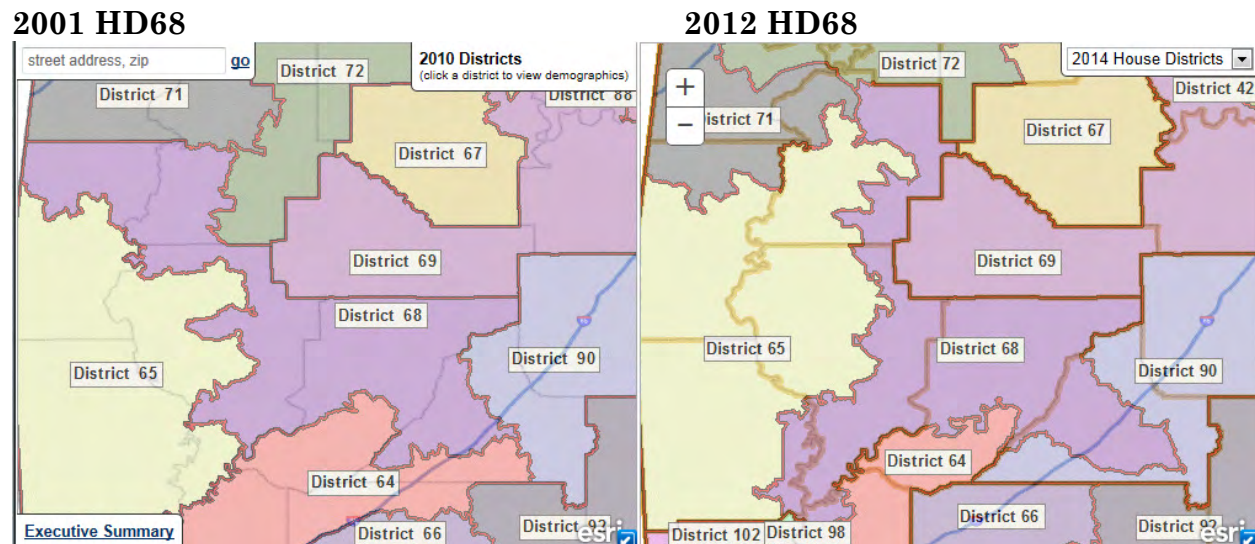
Almost all of the counties surrounding Dallas County are about 69% black: Perry is 69% black, Wilcox is 72.8% black, and Marengo is 52.2% black. (APX 19). Therefore,

the population available to add to HD67 was around 69% black. The plaintiffs have not shown otherwise. Nor could they, given their own proposals.

Finally, because it is undisputedly impossible to draw HD67 with any different black population percentage, HD67 clearly meets strict scrutiny.

## 2. House District 68

There is almost no evidence in the record about HD68. But we do know that it changed along the edges to add population and accommodate neighboring districts that also needed to grow:



Of all the Black Belt House districts, HD68 needed to add the most population — 9,287 persons — to bring it to ideal population. Compounding the difficulty of redrawing this district was the need to add people to the adjoining districts, HD 65 and HD71, which border the State of Mississippi and, as a result, were limited in how they could grow. Ultimately, our map of incumbent residences shows that HD65 expanded as far north as it could go without overtaking the incumbent from HD71, and HD71 expanded as far north as it could go without



creating a conflict with the incumbent for HD61. (*See* Def. Supp. Ex. 2). Similarly, the incumbent of HD68 restricted how far east HD65 could grow. (*Id.*) Consequently, parts of HD68 were reassigned to HD65 and HD71 — in particular, HD68 lost Choctaw County, which went mostly to HD71. In turn, HD68 took over part of HD 72 and grew to the southwest and southeast. Still, the new 2012 HD68 maintains the core of the 2001 HD68, is at least as compact as its predecessor, and protected the incumbent — all legitimate non-racial objectives.

The demographics of area counties drove the demographics of HD68. The 2012 HD68 is 64.56% black — an increase of 2% over the alleged target of 62.55% black, which was the population of the 2001 HD68 with 2010 Census data. (Ex. 2 (citing SDX 403, 406)). 41,964 of HD68’s 45,069 people live in Clarke, Conecuh, Marengo, and Monroe Counties. Each of these counties both lost population and became relatively more black between 2000 and 2010. The following chart<sup>18</sup> reflects this:

County	2010 Census	2000 Census	Gain or Loss
Clarke	25,833	27,867	-2,034
%W	54.5	55.9	-1.4
%B	43.9	43.0	+ .9
Conecuh	13,228	14,089	-861
%W	51.3	55.4	-4.1
%B	46.5	43.6	+2.9
Marengo	21,027	22,539	-1,512
%W	46.4	47.3	-.9
%B	51.7	51.7	0

<sup>18</sup> The data in this chart comes from the Census Bureau’s American FactFinder, which is located at [http://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml). On this page, enter the name of a county and then, for its 2010 population, select the “General Populations and Housing Characteristics” report. For 2000 Census data, select the “General Demographic Characteristics” report.



County	2010 Census	2000 Census	Gain or Loss
Monroe	23,070	24,324	-1,254
%W	55.1	57.7	-2.6
%B	41.7	40.1	+1.6

The surrounding population that could be used to bring HD68 close to ideal population was mostly black.

The plaintiffs' alternative plans all have a lower black population in HD68 (with the Knight Plan putting it at 25.4% black), but the plaintiffs flatly reject the drafters' race-neutral criteria:

Black Population Percentages In Various Proposed House Plans					
Dist. No.	SDX 403 2012 Plan as Passed	SDX 470 McClammy Plan	C45 Buskey Reap. 4 (ADC Plan)	C42 Knight Plan	APSX 36 ALBC Plan
68	64.56	53.9	55.2	25.4	53.3

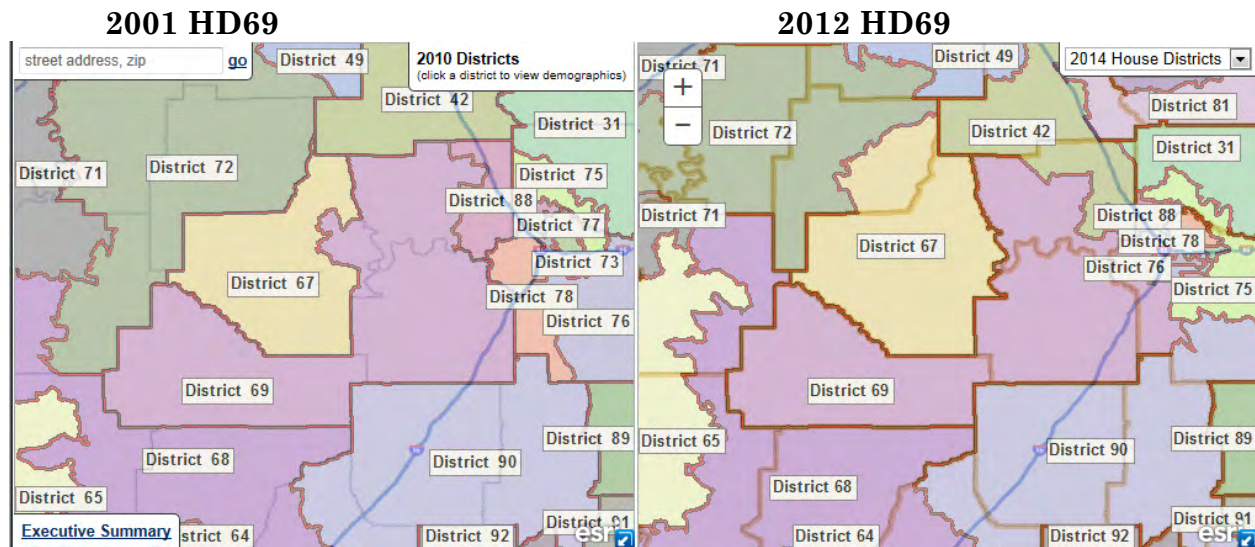
A comparison of these maps shows that only the McClammy plan makes even a reasonable attempt to keep the districts in their former location.

In short, HD68 needed almost 10,000 people added to it, and it also had to give part of its former population to other districts that border Mississippi and had no choice to move east and north. The resulting district is reasonably compact, preserves the core of the former districts, protects incumbency, and preserves communities of interest. The plaintiffs have not shown that race predominated over these legitimate redistricting criteria when HD68 was drawn.

### 3. House District 69

HD69 is at least as compact as its predecessor, follows county lines for most of its boundary, preserves the core of the former HD69, protects its incumbent, and

preserves communities of interest. These are the traditional redistricting criteria that predominantly shaped HD69, not race.



In 1993, HD69 consisted of all of Wilcox and Lowndes Counties and part of Dallas County. In 2001, almost 8,000 people from Autauga County were added to the district to bring its population within 5% of the then-ideal population. The 2010 Census showed that the new HD69 would need almost 8,000 more people to reach ideal population. The drafters had limited options to expand HD69. HD69 could not easily expand into HD67 or HD68, which also lost population. HD90, to the south, needed 5,530 people, and HD42, to the north, had a surplus of only 2,817 people — not enough to meet HD69’s needs. (SDX 406). However, the population of Montgomery County, to the east, increased between 2001 and 2010, and the removal of HD73 to Shelby County meant that HD69 could grow east, and that is what happened. The following chart<sup>19</sup> shows the County population.

<sup>19</sup> The data in this chart comes from the Census Bureau’s American FactFinder, which is located at [http://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml). On this page, enter the name of a county and then, for its 2010 population, select the “General Populations and Housing

County	2010 Census	2000 Census	Gain or Loss
Autauga	54,571	43,671	+10,900
%W	78.5	80.7	-2.2
%B	17.7	17.1	+6
Lowndes	11,299	9,974	+1,325
%W	25.3	19.1	+6.2
%B	73.5	80.3	-6.8
Montgomery	229,363		
%W	39.5		
%B	54.7		
Wilcox	11,670	13,183	-1,513
%W	26.8	27.5	-.7
%B	72.5	71.9	+.6

As Randy Hinaman explained, moving HD73 to Shelby County gave him leeway to repopulate the underpopulated majority-black House districts in Montgomery County, but he also used some of the former HD73 population to repopulate HD69. (Tr. 3.135-160 (“Well, it would have been hard to [repopulate HD69 without going into Montgomery County] without eliminating another black district.”)).

The precinct splits in HD69 make it less black, not more. Without precinct splits, the percentage of black persons in HD69 would rise slightly from 64.21% to 66.7%. (Ex. 3).

Finally, even if the Court were to find that race predominated, this district, at 64.21% black, survives strict scrutiny.

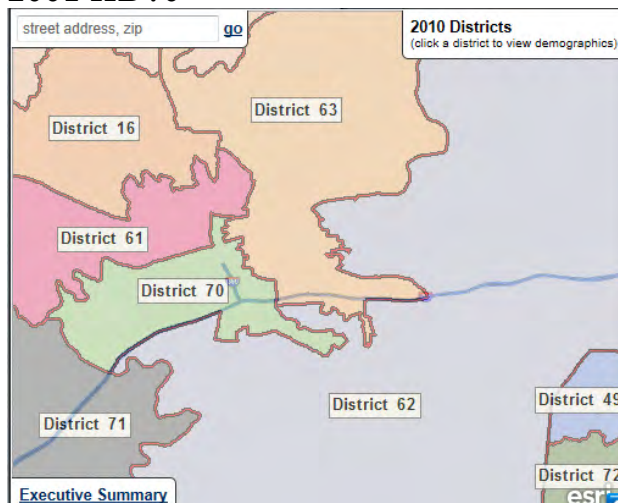
---

Characteristics” report. For 2000 Census data, select the “General Demographic Characteristics” report.

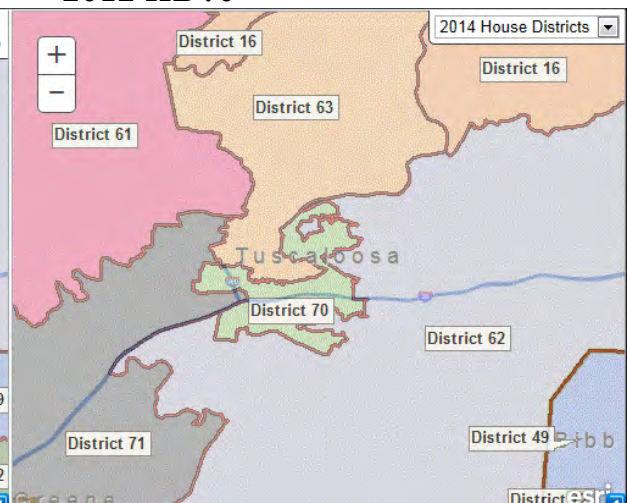
#### 4. House District 70

HD70 was and remains an urban district in the City of Tuscaloosa. Much of its western half as drawn in 2001 was given in 2012 to HD71, a predominately Black Belt district that needed about 7,427 people who, as we have seen, were not available from Black Belt counties. Unlike those declining-population counties, between 2000 and 2010 Tuscaloosa County's population increased by a healthy 29,775 people. Consequently, HD70 moved east within the City of Tuscaloosa. As the maps below show, HD70 is at least as compact, if not more compact, than its predecessor:

**2001 HD70**



**2012 HD70**



The demographics of HD70 are mostly explained by the demographics of the area. The percentage-black population of HD70 as drawn is in line with that proposed by the McClammy and Buskey plans (even though they, like the other alternatives, are not drawn to  $\pm 1\%$ ):

<b>Black Population Percentages In Various Proposed House Plans</b>					
Dist. No.	SDX 403 2012 Plan as Passed	SDX 470 McClammy Plan	C45 Buskey Reap. 4 (ADC Plan)	C42 Knight Plan	APSX 36 ALBC Plan
70	62.03	61.2	61.7	57.2	57.2

The plaintiffs also get no support from an analysis of precinct splits. As drawn with precinct splits, HD70 is 62.0% black. Without precinct splits, HD70 would increase to 63.1% black. Precinct splits were not used to increase the black population of HD70. (Ex. 3).

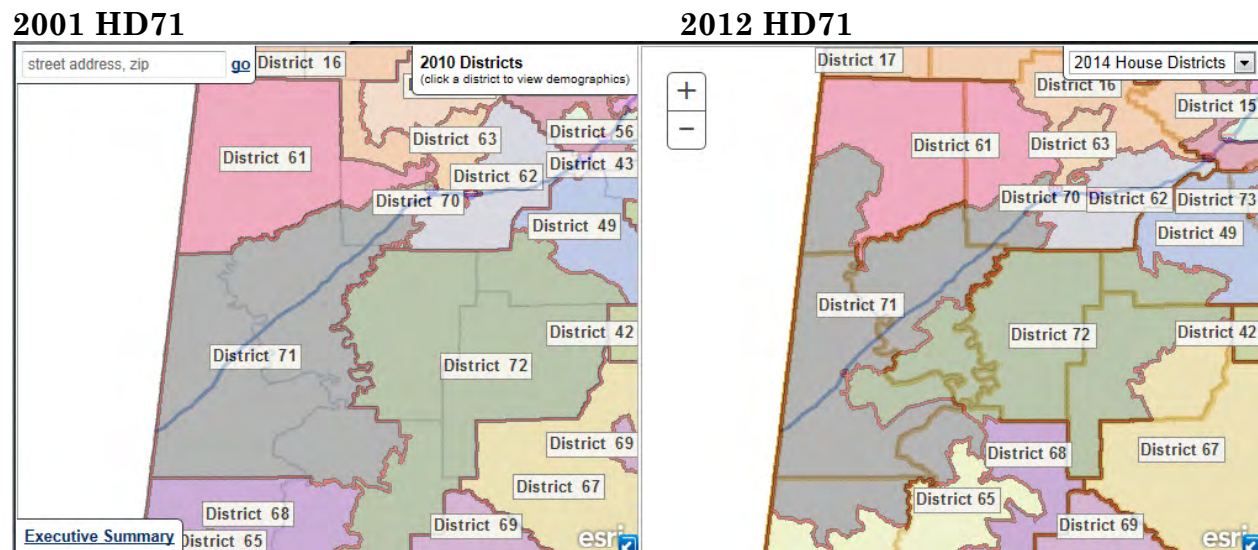
Moreover, a study of the people added to and removed from HD70, according to ADC Supp. Ex. 4, reveals no racial sorting. The portion that remained in the district (included in both the old and new HD70) is 68.1% black; the portion added was 56.1% black; and the portion removed was 53.5% black. (ADC Supp. Ex. 4). These moves, necessary to add population to HD70 and HD71, took in contiguous population, and plaintiffs do not point to a single precinct, or portion thereof, that would have been a better choice to add to HD70 using traditional districting criteria. Expansion to the south and west was restricted, due to the residencies of the incumbents for HD70 and HD62 (Def. Supp. Ex. 2) and the underpopulation of the districts to the west. There is zero proof that an alternative exists that would protect the area incumbents and keep HD70 and surrounding districts within deviation. HD70 is reasonably compact, preserves the core of the former HD70 and an urban community of interest, and protects the incumbent. These are race-neutral



explanations for why HD70 was drawn as it was. Finally, even if race predominated, HD70, at 62.03% black, survives strict scrutiny.

## 5. House District 71

HD71 is reasonably compact. While its overall shape changed to accommodate neighboring districts, the core of the former HD71 and the communities of interest therein were preserved, and the new district protected the incumbent.



The ADC refers to HD71's present shape as "an uncouth, illogical figure," (Doc. 258 at 69), but this ignores the population needs of HD71's surrounding districts, and the limitations imposed by the fact that HD61, HD71, and HD68 all border Mississippi. HD71, like other Black Belt districts, lost population between 2000 and 2010. Consequently, in 2012, the Legislature had to repopulate it by 7,427 people, while at the same time repopulating many of its neighbors. To the north, HD61 needed 4,099 people, and moving clockwise, HD70 needed 6,268, HD72

needed 6,107, and HD68 needed 9,287. Moreover, as discussed above, the residencies of the HD61 and HD71 incumbents restricted expansion in certain directions. (Def. Supp. Ex. 2). As a result, HD70 gave territory to some neighbors and took territory from others. It gave territory to HD65 (which needed 6,840 people), HD68, and HD72. To the south, it took part of Choctaw County from HD68, and to the north, part of Pickens County from HD61. These additions did not make it whole, and because HD71 borders Mississippi, the only option was for it to expand east, into population-rich Tuscaloosa County.

The ADC suggests that HD71 could have remained more or less as it was. (Doc. 258 at 68 (“Even as under-populated, however, the district had sufficient black population to comprise a majority of an ideally populated district.”)). That ignores the population needs of surrounding districts. As Hinaman admitted, the possibilities are almost infinite if the focus is on drawing only one district and other districts are ignored; but his job was to draw a *statewide* plan, and in order to do that he had to deal with the realities of population and geography in the Black Belt. (See Doc. 203 at 108 (“As Hinaman repeatedly explained, one can always redraw lines in a particular county, but the key is to fit the illustrative map into a statewide plan.”)).

In 2012, HD71 became slightly more black (66.9%) than it had been in 2001 (64.2%), and about as black as it was in 1993 (66.7%). These are immaterial differences. However, if the Legislature had been trying to hit the alleged target of 64.28% — HD71 as drawn in 2001 with 2010 Census data — it missed the mark by

2.62% (*see* Ex. 2), and there is no reason to think that it could not have hit the bullseye squarely if it had proceeded as surgically and with such race consciousness as the plaintiffs allege.

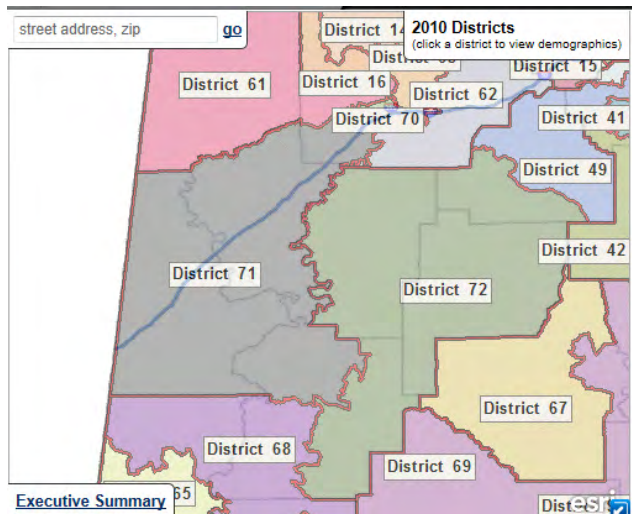
An analysis of precinct splits does not support the plaintiffs' claims. As drawn with precinct splits, HD71 is 66.9% black. Without splits, black population increases by .6% to 67.5%. (Ex. 3). If the Legislature's goal was to pack HD71, it would have been better off not splitting precincts.

Finally, even if race predominated, HD71 would meet strict scrutiny because the plaintiffs have never shown any way to comply with the undisputed elements of the Voting Rights Act in a less race-conscious manner.

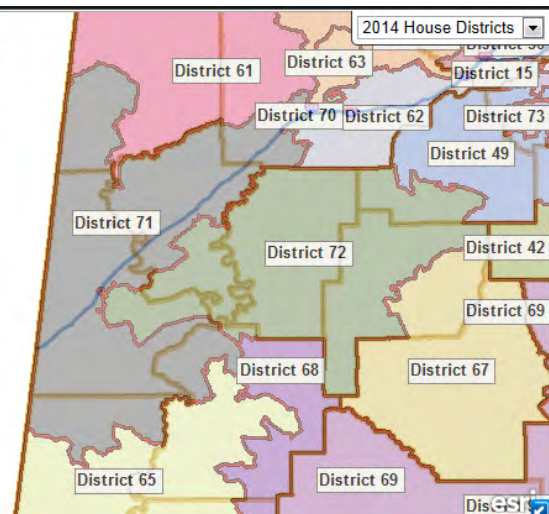
## 6. House District 72

Plaintiffs have not shown that a significant number of persons were placed in HD72 on account of race, or that race predominated in a way that conflicts with traditional districting criteria.

**2001 HD72**



**2012 HD72**





HD72 is 64.6% black. (SDX 403). In 2001, it was 60.7 % black, and 60.2% black with 2010 Census data. (Doc. 203 at 43). The present black population of HD72 is 4.4% higher than it was under the 2001 plan loaded with 2010 Census data. (Ex. 2). If the drafters had a “target” for this district, then they missed it by quite a bit.

Ultimately, HD72 suffered from the same pressures and effects of underpopulation as HDs 67-71. The 2010 Census showed that it was 6,107 people short of ideal population. But it adjoined other districts that were short of population too: HD71 needed 7,247 people, HD67 needed 7,643 people, HD69 needed 7,949 people, and HD68 needed 9,287 people. (SDX 406). Moreover, as explained in the following chart,<sup>20</sup> of the four counties in 2001 HD72, only one, Bibb County, gained population between 2000 and 2010, albeit by a modest amount; the others all lost population:

---

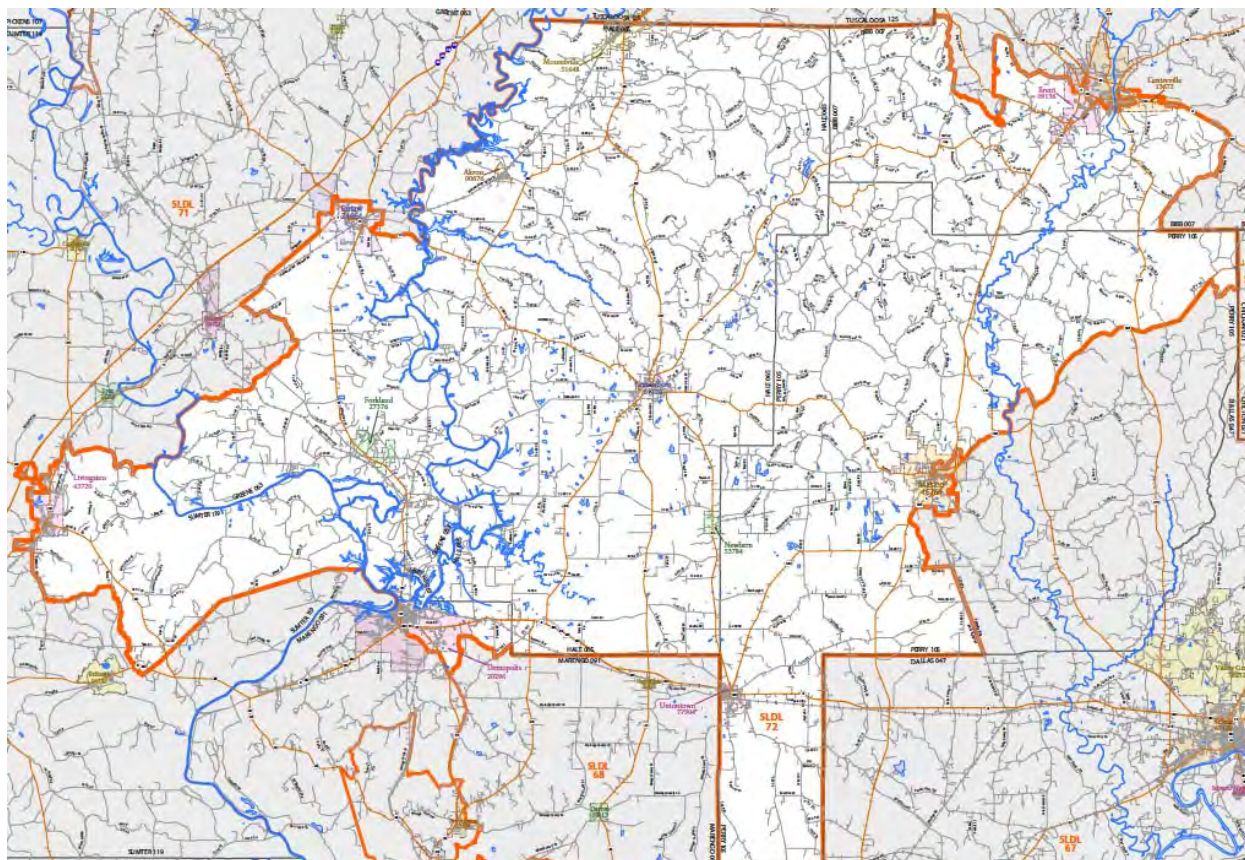
<sup>20</sup> The data in this chart comes from the Census Bureau’s American FactFinder, which is located at [http://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml). On this page, enter the name of a county and then, for its 2010 population, select the “General Populations and Housing Characteristics” report. For 2000 Census data, select the “General Demographic Characteristics” report.

County	2010 Census	2000 Census	Gain or Loss
Bibb	22,915	20,826	+2,089
%W	75.8	76.7	-.9
%B	22.0	22.2	-.2
Hale	15,760	17,185	-1,425
%W	39.8	39.8	0
%B	59.0	59.0	0
Marengo	21,027	22,539	-1,512
%W	46.4	47.3	-.9
%B	51.7	51.7	0
Perry	10,591	11,861	-1,270
%W	30.3	30.9	-.6
%B	68.7	68.4	+.3

The result in 2012 was a more compact HD72, which included for the first time parts of Greene and Sumter Counties, and lacked the peninsula that was a prominent feature of 2001 HD72. But as the next map<sup>21</sup> shows, the new HD72 generally followed county lines and natural boundaries, such as a river. It also preserved numerous small-town communities of interest scattered across an otherwise sparsely populated district:

---

<sup>21</sup> This detail map of HD72 comes from the Census Bureau. It is available at [http://www2.census.gov/geo/maps/dc10map/SLD\\_RefMap/lower/st01\\_al/sldl01072/DC10SLDL01072\\_001.pdf](http://www2.census.gov/geo/maps/dc10map/SLD_RefMap/lower/st01_al/sldl01072/DC10SLDL01072_001.pdf).



This map quite clearly shows that the boundaries of HD72 were driven by the need to include the populations of various small towns at its edges. There is a small city to the southeast, another small city to the southwest, another small city to the northwest, and yet another small city to the northeast. The population centers are the obvious explanation for the purportedly unusual shape of HD72.

The plaintiffs erroneously suggest that precinct splits establish racial predominance. But putting the precincts back together results in a district with a black population of only 2.0% less than if there were no splits. (Ex. 3). In fact, eliminating splits puts us closer to the “target” of 60.2% than the drafters’ plan *with splits*.

Finally, even if race predominated, HD72 is 64.6% black and survives strict scrutiny.

\* \* \*

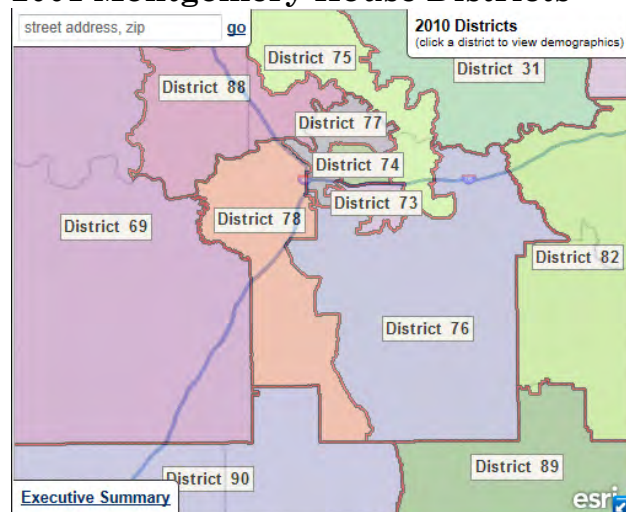
These districts in the West Black Belt counties have the racial composition that they have because of where people live. It may be possible to draw alternatives with slight differences, if the drafter ignores other, race-neutral legislative goals. But, with the across-the-board need to add population, the limitations for expansion caused by incumbent addresses (and the goal of preventing incumbent conflicts), and the limitations for expansion caused by the Alabama-Mississippi border, the Legislature added some of the only population it could to bring the districts within  $\pm 1\%$ . The plaintiffs have not shown that race predominated in the drawing of these districts, and in the alternative, each survives strict scrutiny.



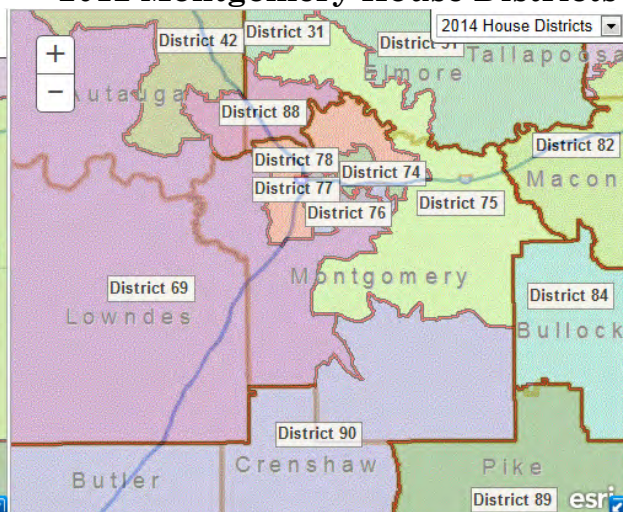
### E. Montgomery County (HDs 76-78)

Plaintiffs' racial gerrymandering claims fall flat as to the Montgomery-area House Districts: HD76, HD77, and HD78. These districts were designed by an incumbent legislator to protect himself and his colleagues. And they greatly vary from the "target" that the drafters of these plans supposedly "mechanically" applied. Finally, and in any event, these districts meet strict scrutiny because there is no other known way to draw them and also comply with the undisputed requirements of the Voting Rights Act.

**2001 Montgomery House Districts**



**2012 Montgomery House Districts**



HDs 76, 77, and 78 in Montgomery County were each under-populated, HD77 and HD78 significantly so:

	Act 2012- 603	Underpop. of 2001 District	2001 House	1993 House
House District	Total Black	Using 2010 Census Data	Total Black	Total Black Pop.
Number	Pop. (%)	(%)	Pop. (%)	(%)
76	73.79	- 1.38	73.309	66.69
77	67.04	-23.12	69.677	71.93
78	69.99	-32.16	72.697	72.37

(SDX 403, NPX 310). All three districts have exceeded 65% black in the past three districting plans. (*Id.*) Collectively, the districts were more than 25,000 people short of ideal population. (SDX 406).

HD73 was moved from Montgomery County to Shelby County as a feature of the 2012 plan, and much of Plaintiffs' complaints about the Montgomery House districts revolve around this move. Removing HD73 from Montgomery was a feature, though, of a plan designed by Rep. McClammy (D), who represents HD76. He provided the design to Rep. McClendon, who provided it to Hinaman, who used the concept to design the Montgomery House districts. (Tr. 3.133-134, 228-29). Moving HD73 to Shelby County made sense, when the districts in Montgomery County were *under*-populated and every district in Shelby County was vastly *over*-populated. (Tr. 3.133-134). In fact, just a handful of districts in Shelby County had an excess of around 63,000 people, enough for nearly one and a half ideal House districts. (SDX 406; Tr. 2.189-190).

Plaintiffs, members of the Democratic Party, understandably would have preferred that the Legislature equalize population by disrupting a Republican district like HD74, instead of a Democratic district like HD73. (*See* Doc. 258 at 71-72). The Republican majority (and Rep. McClammy) disagreed and moved HD73 instead. The numbers required a move, and *politics* drove the choice of which district to move. (The newly proposed ALBC plan likewise moves HD73 to Shelby

County; they say it is to avoid splitting Montgomery County. (Doc. 256 at 104; APSX 35, 36A)).

Moreover, no alleged “target” can be blamed for these districts. None of the three came within four points of the black population percentages of the 2001 districts using 2010 Census data:

House District	SDX 403 Black % in 2001 plan using 2010 Census Data	SDX 406 Act 2012-602 Plan as Passed Black %	Difference
76	73.79	69.54	-4.25
77	67.04	73.52	+6.48
78	69.99	74.26	+4.27

Finally, precinct splits are not evidence of race-consciousness in these districts. Keeping the precincts whole in HD76 would *raise* the percentage of blacks in the district, from 73.8% to 79%. (Ex. 3). In HD77, the percentage would rise negligibly from 67.0 to 67.8%. (Ex. 3). And in HD78, the percentage of blacks would tick down from 69.9% to 69.0%. (Ex. 3).

Alternative plans (although they did not observe the Legislature’s other criteria) show that these districts have high minority percentages because of where people live, not because of a “quota.” In the McClammy, Buskey, and new ALBC plans, HD76 varies from 63.79% to 75.62%; HD77 from 62.31 to 67.34%; and HD78 from 66.92 to 73.03%. In the plan as passed, the black population percentage in each of the three Montgomery House districts is below the highest of the alternatives:

<b>Black Population Percentages in Various Proposed House Plans</b>				
Dist. No.	SDX 403 2012 Plan as Passed	C45 McClammy Plan	C42 Buskey Reap. 4 (ADC Plan)	APSX 36 ALBC Plan
76	73.79	75.62	64.36	63.79
77	67.04	67.34	62.31	65.61
78	69.99	73.03	74.21	66.92

The same is true when looking at the total number of black persons in each district, as presented by the various plans:

House District	SDX 403 2012 Plan as Passed	C45 McClammy Plan	C42 Buskey Reap. 4 (ADC Plan)	APSX 36 ALBC Plan
76	33925	34766	28602	29575
77	30808	30850	27975	31061
78	32167	33576	32202	29756

Finally, the plaintiffs' arguments about county-splitting have no role to play with these districts. All three reside entirely within Montgomery County, and none crosses a county line. (SDX 404). Race did not predominate in drawing HD76, HD77, and HD78.



### F. East Black Belt (HDs 82-85)

HD82, HD83, HD84, and HD85 make up the eastern end of the Black Belt. The Supreme Court's opinion in this case suggests that the plaintiffs waived any claim about these districts. The Court's opinion includes a chart that lists record cites where the plaintiffs made arguments about specific districts, but that chart does not list HD82, HD83, HD84, or HD85 as districts that the plaintiffs challenged. *See ALBC*, 135 S. Ct. 1257 at Appendix A.

Regardless, there is no evidence that race predominated over other redistricting criteria with respect to these districts. The 2010 Census showed that each of them was underpopulated:

Dist. No.	Ideal Pop.	2010 Pop.	Deviation No.	Deviation %
82	45,521	43,389	-2,132	-4.7%
83	45,521	41,039	-4,482	-9.9%
84	45,521	41,317	-4,204	-9.2%
85	45,521	42,429	-3,092	-6.8%

(SDX 406). The counties that make up HDs 82-85 have not changed much since 1993:

Dist. No.	Counties in 2012 (45,521 = ideal)	Counties in 2001	Counties in 1993
82	Lee - 19,043 Macon - 21,452 Tallapoosa - 5,363	Bullock - 3,033 Lee - 16,915 Macon - 24,105	Bullock Lee Macon
83	Lee - 23,112 Russell - 22,861	Lee - 21,669 Russell - 18,601	Lee Russell
84	Barbour - 27,457 Bullock - 10,914 Russell - 7,598	Barbour - 29,038 Bullock - 8,681 Russell - 3,717	Barbour Henry Henry
85	Henry - 17,302 Houston - 27,927	Henry - 16,310 Houston - 25,401	Dale Henry Houston

(SDX 404 (county splits in 2012 plan); C30 (county splits in 2001 plan); SDX 418 (county splits in 1993 Reed Buskey plan)). Dale County was taken from HD85 in 2001 and Russell County was added to HD84 the same year; in 2012, the only changes were in HD82, which lost Bullock County and added Tallapoosa.

The overall stability of these districts is demonstrated also by the levels of black population over time:

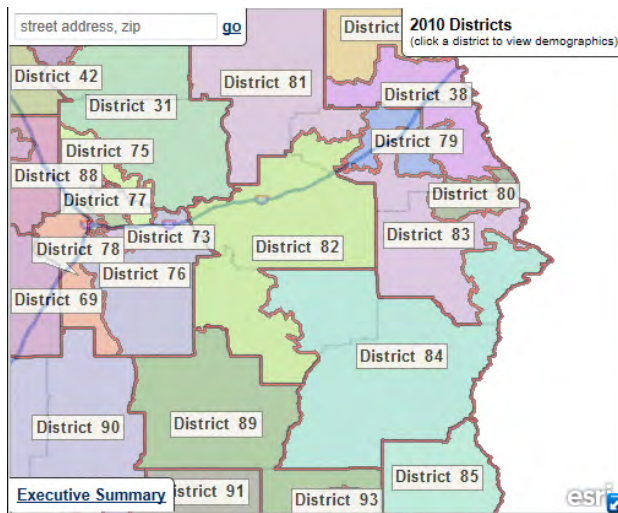
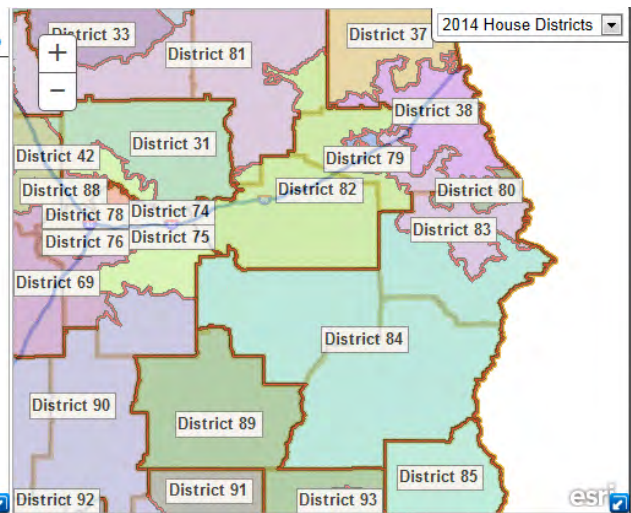
Dist. No.	SDX 403		SDX 411		SDX 417	
	2012 Total Black Pop.	%	2001 Total Black Pop.	%	1993 Total Black Pop.	%
82	62.14		62.67		79.7	
83	57.52		61.2		64.5	
84	52.35		52.4		37.8	
85	50.08		47.9		51.1	

The plaintiffs have not proven that race predominated with respect to any of these districts.

### 1. House District 82

The new HD82 is reasonably compact, generally follows county lines, preserves communities of interest, protects the incumbent, and preserves the core of the former HD82. These are legitimate, traditional redistricting considerations that do not improperly take race into account. The old and new districts appear as follows:

2001 HD 82

2012 HD 82<sup>22</sup>

The two plaintiff groups seem to disagree about HD82. The ADC's curious argument is that while HD82 admittedly was underpopulated in 2010, it contained enough black persons to be 54.47% black by *total* population, and they are satisfied with that. To them, adding additional black persons is racial gerrymandering. (Doc. 258 at 77). Meanwhile, the ALBC argues that the correct way to redistrict HD82 was to make it 66.46% black. (Doc. 256 at 114). The Legislature took a middle path: the district is 62.14% black. (SDX 403).

The demographics of this district are driven by the demographics of the Black Belt itself. The district is centered on Macon County, which is 83.5% black. (APX 19). The district's black population percentage is also consistent with the McClammy plan and has a lower black population percentage than the new ALBC Plan:

<sup>22</sup> The 2012 map makes it look like HD82 extends west into Montgomery and Elmore Counties, but that's not the case. The boundary between Macon and Montgomery Counties is obscured by the labels for HD74 and HD75, but the green area under these labels is HD75, and is not a part of HD82.

<b>Black Population Percentages in Various Proposed House Plans</b>					
Dist. No.	SDX 403 Plan as Passed	C45 McClammy Plan	C42 Buskey Reap. 4 (ADC Plan)	C46 Knight Plan	APSX 36 ALBC Plan
82	62.14	61.14	57.22	53.63	66.46

The ADC complains that 2012 HD82 extends into Tallapoosa County, (Doc. 258 at 77), but ignores the need to add population. HD82 was underpopulated by 2,132, and then about 3,000 people when HD84 took over all of Bullock County. (See SDX 479, 480). Because HD84 was underpopulated to the south, there was nowhere for HD82 to find additional population but to the north. Accordingly, HD82 went north into Tallapoosa County to incorporate the communities of Camp Hill and most of Dadeville.

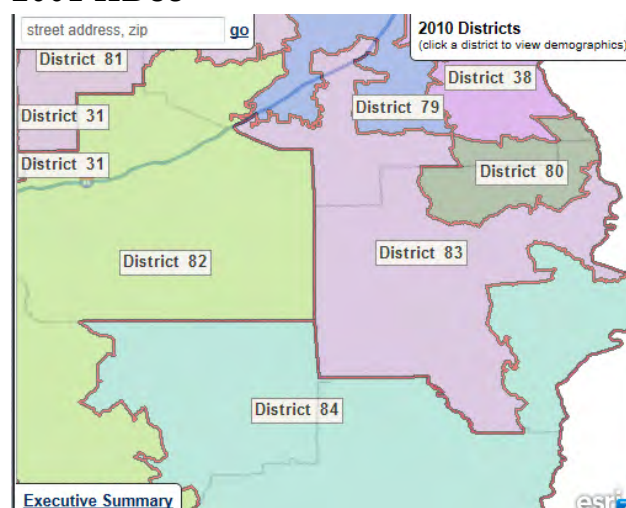
The ALBC complains that 2012 HB82 splits six precincts, and finds detailed fault with every one of them. (Doc. 256 at 114-15). It is difficult, though, to know just what the problem is, as the ALBC sees it. In the first three of the precinct splits, substantially more whites than blacks were put in HD82. (*Id.*) But the ALBC complains that all six splits are racially motivated. Our analysis shows that precinct splits were necessary in this district; we have not been able to find any combination of keeping precincts whole that can keep this district within the population deviation. (Ex. 3). And keeping them whole in a way that comes closest to deviation results in a district that has a higher black population percentage (63.9% black) than the district as passed (62.14% black). (Ex. 3).

Race did not predominate in House District 82, but even if the Court were to find otherwise, the district is only 62.2% black and survives strict scrutiny.

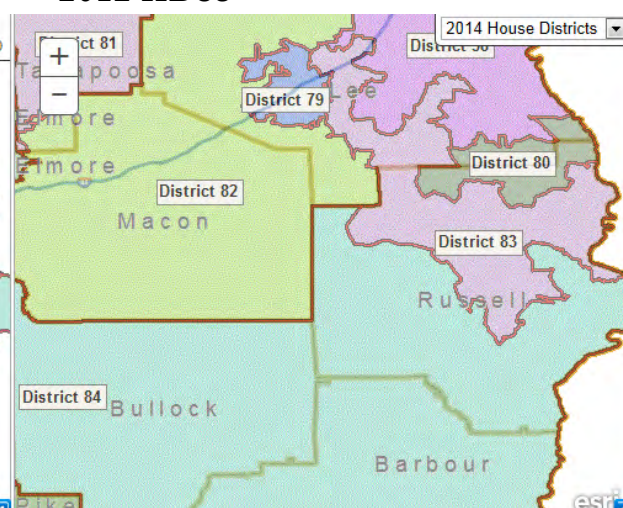
## 2. House District 83

HD83 preserves the core of the former district, protects the incumbent, is compact, and preserves communities of interest. People were moved out of the district to repopulate HD84 to the south, and were moved in to repopulate HD83 from the north. The shape of the district is the same as it was in 2001 and is driven by the need to join the population centers of Opelika and Phenix City.

**2001 HD83**



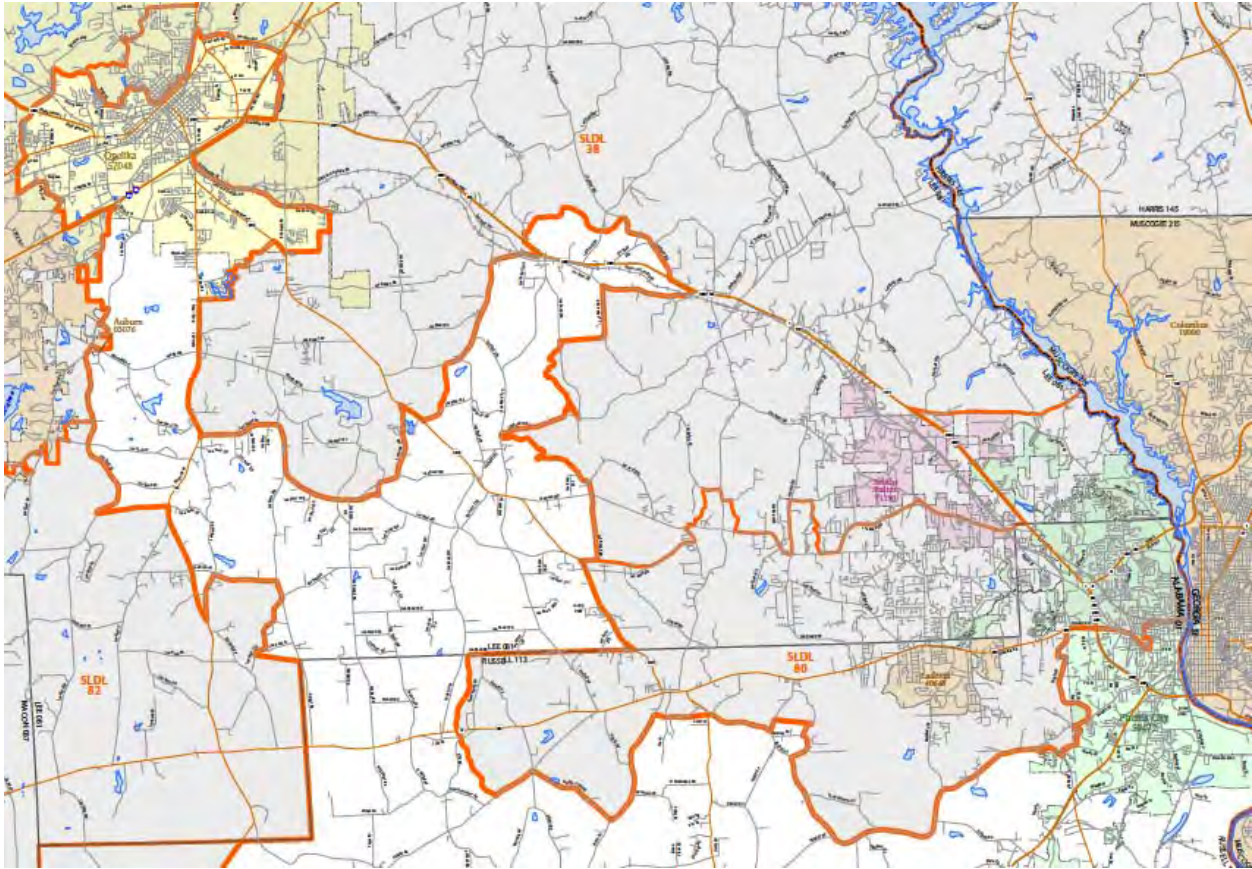
**2012 HD83**



As the next map<sup>23</sup> shows, new HD83 has two main population centers: Opelika, to the northwest — where the incumbent lives — and the southern part of Phenix City. Between these population centers, the shape of the district is explained by the requirement of contiguity: the two population centers must be connected.

<sup>23</sup> This detail map of HD83 comes from the Census Bureau. It is available at [http://www2.census.gov/geo/maps/dc10map/SLD\\_RefMap/lower/st01\\_al/sldl01083/DC10SLDL01083\\_001.pdf](http://www2.census.gov/geo/maps/dc10map/SLD_RefMap/lower/st01_al/sldl01083/DC10SLDL01083_001.pdf).





The 2012 HD83 has only 57.52% black population, but the ADC contends in its brief that this figure should be an even lower 51.31%. (Doc. 258 at 78). Other suggestions are as follows:

<b>Black Population Percentages in Various Proposed House Plans</b>					
Dist. No.	SDX 403 Plan as Passed	C45 McClammy Plan	C42 Buskey Reap. 4 (ADC Plan)	C46 Knight Plan	APSX 36 ALBC Plan
83	57.52	61.87	55.99	13.30	38.58%

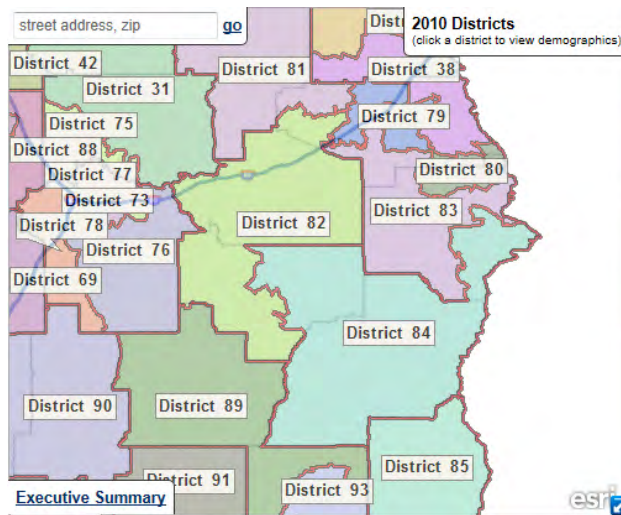
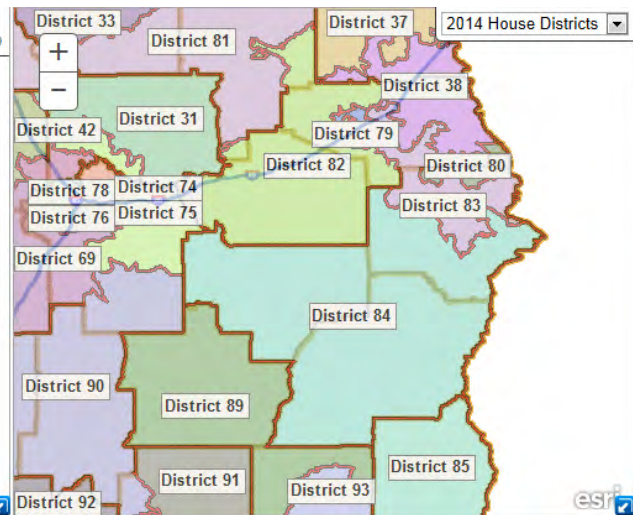
The difference between the ADC plan and HD53 as drawn is minimal, and the McClammy plan would actually increase the black population percentage to 61.87%.

The ALBC complains about precinct splits: in six instances, it complains that more whites than blacks were put into HD83, and in three it complains that more blacks than whites were put into the district. (Doc. 256 at 118-22). The ALBC's argument makes no sense at all; if some precinct splits drive the black population percentage down and others drive it up, the right inference is that precincts were split for reasons that have nothing to do with race. The Court cannot infer from this evidence that race determined the splits, even though six of the nine decreased the black population percentage.

Race did not predominate in the drawing of HD83. Should the Court find otherwise, the district is only 57.52% black and survives strict scrutiny. We also note that, if the precincts were kept whole, the resulting district would cease to be a majority-black district, at 49.8%. (Ex. 3).

### **3. House District 84**

HD84 is not a gerrymandered district. It contains two whole counties and half of another. HD84 needed an additional 3,092 people to reach ideal population, and this was accomplished by giving the district all of Bullock County and a little more of Russell County. The resulting district is compact, mostly follows county lines, preserves communities of interest, protects the incumbent, and maintains the core of the previous district.

**2001 HD84****2012 HD84**

There is no way to draw HD84 with a meaningfully different black population percentage. HD84 is consistent with most of the alternative plans. Two of the alternative plans would draw HD84 to come within one percent of the black population as drawn.

<b>Black Population Percentages in Various Proposed House Plans</b>					
Dist. No.	SDX 403 Plan as Passed	C45 McClammy Plan	C42 Buskey Reap. 4 (ADC Plan)	C46 Knight Plan	APSX36 ALBC Plan
84	52.35	51.40	52.00	26.29	55.17

The plaintiffs understandably have little to say about the district. The ALBC admits that the one county that was split “must be split.” (Doc. 256 at 125). And the one precinct split resulted in only 27 blacks coming into the district, so putting it back together makes practically zero difference. (Ex. 3).

The evidence shows that improper racial consideration did not predominate over traditional redistricting consideration when HD84 was drawn, and even if that were not the case, with a black population of only 52.35%, it survives strict scrutiny.

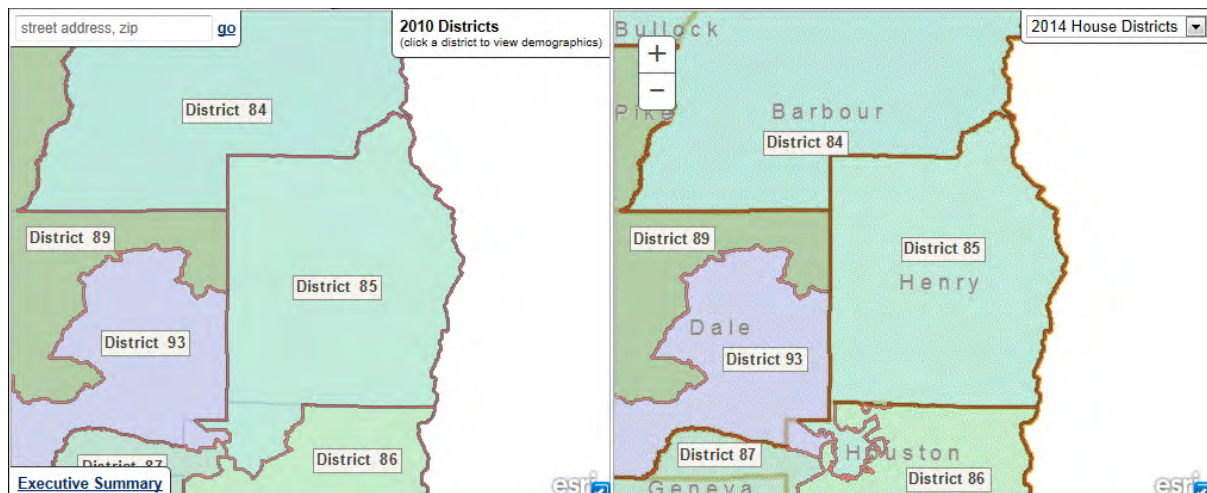


#### 4. House District 85

The new HD85 maintains the core of the previous district, preserves communities of interest, protects the incumbent, mostly follows county lines, and is compact. It takes up the entirety of Henry County and parts of the City of Dothan in Houston County. It is also barely a majority-black district at 50.08% black.

2001 HD85

2012 HD85



HD85 needed 3,092 people to reach ideal population, and to accomplish this, changes were made in the vicinity of Dothan, which the ADC describes as a “crazy-quilt pattern.” (Doc. 258 at 80). But HD85 as redrawn is as compact as its predecessor.

It is also within the range of black populations offered by the alternative non-compliant plans:

Black Population Percentages in Various Proposed House Plans					
Dist. No.	SDX 403 Plan as Passed	C45 McClammy Plan	C42 Buskey Reap. 4 (ADC Plan)	C46 Knight Plan	APSX 36 ALBC Plan
85	50.08	47.96	53.94	54.21	49.21

There is hardly a difference between the HD85's percentage black population and that proposed by the ALBC. The current district is only 2% of black population different from what the McClammy plan proposes. And the black population percentage is less than what the other plans propose.

As for precinct splits, there were nine. Putting those precincts back together results in a district that is only 35.8% black. (Ex. 3). It appears to be impossible to preserve the district as a majority-black district and not split precincts. Given that the district has always been roughly 50% black, this is a good indication that these precincts have always been split and that the drafters were (more or less) following preexisting lines.

The evidence shows that race did not predominate when HD85 was drawn. If the Court finds otherwise, with a population of only 50.08% black, the district survives strict scrutiny.

**G. Mobile County (HD 97-99, and HD103)**

There is no testimony in the record about the Mobile County House Districts: HD97, HD98, HD99, and HD103. Although Mobile Sen. Vivian Figures testified at trial, she addressed only her Senate district, not any House districts. Indeed, the Supreme Court's opinion in this case suggests that the plaintiffs waived any claim about these districts. The Court's opinion includes a chart that lists record cites where the plaintiffs made arguments about specific districts, but that chart does not list HD97, HD98, HD99, or HD103 as districts that the plaintiffs challenged. *See ALBC*, 135 S. Ct. 1257 at Appendix A.

Regardless, the plaintiffs failed to show that the Mobile County black-majority House districts are racially gerrymandered. All of these districts prevent incumbent conflicts. And they all have a lesser percentage of black population than Hinaman's alleged target. If Hinaman were trying to reach a target, he missed it by more than 5% for HD98, by almost 8% for HD99, and more than 4% for HD103. (Ex. 2). Moreover, the percentage of black population in these districts does not differ significantly from the percentages for the same districts in the alternative plans drawn by the plaintiffs. Leaving aside the fact that they are not drawn based on the same race-neutral criteria as the State's plans, the percentages for the Mobile majority-black districts are as follows:

Dist. No.	SDX 403 2012	C45 McClammy	C42 Buskey	APSX36 ALBC
HD 97	60.66	63.00	63.59	57.19
HD 98	60.02	60.22	61.57	60.45
HD 99	65.61	62.92	63.55	58.50
HD 103	65.06	62.08	63.03	63.16

These similarities strongly suggest that the districts merely match the demographics of the area. The plaintiffs' racial gerrymandering claim clearly fails as to these districts.

### 1. House District 97

Because they have introduced no actual evidence of racial predominance, the plaintiffs cite to precinct splits in an attempt to show that race predominated in HD97. There were 14 precincts split in the 2001 House plan in HD97 (SDX 413), and only 10 in the 2012 plan (SDX 405). The effect of unsplitting those 10 precincts, while maintaining the overall deviation for HD97, would be to *increase* the minority percentage of the total population of HD97 by 4.1%, bringing it to 64.8% of the district total. (Ex. 3).

The ADC points to two split precincts that allegedly show racially gerrymandered splits (Doc. 258-1 at 12-13), and the ALBC points to nine (Doc. 256 at 126-31). Only two of those precincts involve splits between white- and black-majority districts, *and those splits moved more white residents than black residents into majority-black HD97.*

	Moved into HD 97	
	<u>White</u>	<u>Black</u>
Chickasaw Auditorium	2,743	1,143
Saraland Civic Center	<u>161</u>	<u>101</u>
Total	2,904	1,244

(See Doc. 258-1, at 12-13). The effect of these splits was to *reduce* the extent of the black majority in the district, not increase it. The ADC also complains that 2,145

white residents and 316 black residents of those precincts were moved into a neighboring white-majority district. (*Id.*) The larger point is that the demographics for the portions of both precincts are, substantially, majority white: for Chickasaw Auditorium, 2,906 whites, and 1,222 blacks; and for Saraland Civic Center, 2,143 whites and 336 blacks. (*Id.*) When the Legislature split these precincts, they placed more white people in both the majority-white district and the majority-black district. The argument that these splits are racially-motivated makes literally no sense at all.

As noted, the ALBC cites nine precinct splits, including those cited by the ADC. Their claims directed at the splitting of the Chickasaw Auditorium and Saraland Civic Center precincts fail for the same reasons that the ADC's claims lack merit. In some of the other precincts, like 100 Black Men of Greater Mobile (10 whites total), Figures Recreation Center (40 whites total), Rock of Faith Baptist Church (85 whites total), and Vigor High School (126 whites total), the number of white residents is so minimal that the racial composition of the split is completely irrelevant. In other cases, like Augusta Evans School, St. Andrew's Episcopal, and Murphy High School Library, the only result is that white residents went into one black-majority district instead of another majority-black district. (Doc. 256 at 126 *et seq.*) These precinct splits do not establish that race predominated over other criteria in HD97.

## 2. House District 98

We know from Rep. McClendon's notebook that the incumbents from HD102 and HD98 agreed to swap precincts or parts of precincts between these districts. (See SDX 459 at 001517). And we know that the black population of HD98 is 5.2% below the drafters' alleged target. (Ex. 2). If the drafters were trying to hit a target, they missed it by a significant margin. In fact, the drafters' version of HD98 has a *lower* black percentage than is proposed in any of the alternative plans. (Ex. 1). So, the drafters apparently could have come closer to their alleged target if they had wanted.

Precinct splits in HD98 do not show racial gerrymandering. The effect of unsplitting the precincts, while maintaining the overall deviation for HD98, would be to increase the minority population of HD98 by 4.9%, from 60.02% to 64.9% of the total. (See Ex. 3). Moreover, while these splits place more black residents in HD98 in total than were placed in the neighboring white-majority districts in total, more white residents than black residents were placed in *both* districts. (Doc. 258-1 at 13). In other words, these splits did not help create a majority-black district—these splits lowered the black population percentage of the district.

## 3. House District 99

The plaintiffs cannot identify any reason to believe that race predominated in HD99. The black population of HD99 is more than 7% below Hinaman's alleged target. (Ex. 2). At 65.61% black, the district is only slightly higher than that proposed in the alternative plans. (Ex. 1). The effect of unsplitting the split

precincts in HD99, while maintaining the overall deviation for HD99, would be to increase the minority population of HD99 by 3.4%, from 65.61 to 69.0% of the total. (Ex. 3).

#### **4. House District 103**

There is also no reason to believe that race predominated in HD103. The black population of HD103 is 4.58% below Hinaman's alleged target for that district. (Ex. 2). The proposed alternative plans contain an HD103 that is only slightly lower than in the plan as passed. (Ex. 1). And the effect of unsplitting the eight split precincts, while maintaining the overall deviation for HD103, would be to increase the minority population of HD103 by 3.2% to 68.3% of the total. (Ex. 3).

\* \* \*

Plaintiffs have not shown that race predominated in drawing the Mobile House districts. But even if this Court disagrees, because the minority population of each of these districts falls between 60 and 65% of the total, they would pass strict scrutiny.

#### **CONCLUSION**

The Court should enter judgment in favor of the defendants with respect to each and every district.

Respectfully submitted,

LUTHER STRANGE  
Attorney General of Alabama

By:

s/ Andrew L. Brasher  
Andrew L. Brasher (ASB-4325-W73B)

*Solicitor General*

Megan Kirkpatrick (ASB-2652-M66K)

*Deputy Solicitor General*

James W. Davis (ASB-4063-I58J)

Misty S. Fairbanks Messick (ASB-1813-T71F)

*Assistant Attorney General*

Office of the Attorney General

State of Alabama

Post Office Box 300152

Montgomery, AL 36130-0152

Telephone: 334-242-7300

Fax: 334-353-8440

[abrasher@ago.state.al.us](mailto:abrasher@ago.state.al.us)

[mkirkpatrick@ago.state.al.us](mailto:mkirkpatrick@ago.state.al.us)

[jimdavis@ago.state.al.us](mailto:jimdavis@ago.state.al.us)

John J. Park, Jr. (ASB-xxxx-P62J)

*Deputy Attorney General*

Strickland Brockington Lewis LLP

Midtown Proscenium Suite 2200

1170 Peachtree Street NE

Atlanta, GA 30309

Telephone: 678-347-2200

Fax: 678-347-2210

[jip@sblaw.net](mailto:jip@sblaw.net)

**Counsel for the State Defendants**

David B. Byrne, Jr.

*Legal Advisor to Governor Robert Bentley*

Office of the Governor

Alabama State Capitol

600 Dexter Avenue, Suite NB-05

Montgomery, Alabama 36130

Telephone: 334-242-7120

Fax: 334-242-2335

[david.byrne@governor.alabama.gov](mailto:david.byrne@governor.alabama.gov)

s/ Algert S. Agricola, Jr.

Ryals, Donaldson & Agricola, P.C.

60 Commerce Street, Suite 1400

Montgomery, Alabama 36104

Telephone: 334-834-5290

Fax: 334-834-5297

[aagricola@rdafirm.com](mailto:aagricola@rdafirm.com)



**Counsel for the State of Alabama and  
Governor Bentley**

s/ Dorman Walker

---

Dorman Walker (ASB-0717-R81J)

Balch & Bingham LLP

Post Office Box 78

Montgomery, AL 36101-0078

Telephone: 334-834-6500

Fax: 334-269-3115

[dwalker@balch.com](mailto:dwalker@balch.com)

**Counsel for Defendants-Intervenors,  
Jim McClendon, Gerald Dial and Randy  
Davis**

**CERTIFICATE OF SERVICE**

I hereby certify that, on July 24, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

James U. Blacksher  
Post Office Box 636  
Birmingham, Alabama 35201  
[jblacksher@ns.sympatico.ca](mailto:jblacksher@ns.sympatico.ca)

Edward Still  
Edward Still Law Firm LLC  
429 Green Springs Hwy, Ste 161-304  
Birmingham, Alabama 35209  
[still@votelaw.com](mailto:still@votelaw.com)

U.W. Clemon  
White Arnold & Dowd, P.C.  
2025 Third Avenue North, Suite 500  
Birmingham, Alabama 35203  
[uwclemon@whitearnolddowd.com](mailto:uwclemon@whitearnolddowd.com)

James H. Anderson  
Copeland, Franco, Screws & Gill, P.A.  
Post Office Box 347  
Montgomery, Alabama 36101-0347  
[anderson@copelandfranco.com](mailto:anderson@copelandfranco.com)

Joe M. Reed  
Joe M. Reed & Associates, LLC  
524 South Union Street  
Montgomery, Alabama 36104  
[joemreed@wowway.net](mailto:joemreed@wowway.net)

John K. Tanner  
Attorney at Law  
3743 Military Road, NW  
Washington, DC 20015  
[john.k.tanner@gmail.com](mailto:john.k.tanner@gmail.com)

Walter S. Turner  
Walter S. Turner, Esq.  
Post Office Box 6142  
Montgomery, Alabama 36106  
[wsthayer@juno.com](mailto:wsthayer@juno.com)

William F. Patty  
The Gardner Firm, P.C.  
Post Office Box 991  
Montgomery, Alabama 36101-0991  
[bpatty@thegardnerfirm.com](mailto:bpatty@thegardnerfirm.com)

Joel Caldwell  
Copeland, Franco, Screws & Gill, P.A.  
444 South Perry Street  
Montgomery, Alabama 36104  
[caldwell@copelandfranco.com](mailto:caldwell@copelandfranco.com)

Additionally, I hereby certify that, on July 24, 2015, I am placing a copy of the foregoing in the U.S. Mail, postage pre-paid, to the following counsel of record:

Jesse K. Anderson  
Hill Hill Carter Franco Cole & Black  
Post Office Box 116  
Montgomery, AL 36101-0116

s/Andrew L. Brasher  
Of Counsel

**EXHIBIT 1****Comparison of Plaintiffs' Plans with Challenged Plans**

<b>House District</b>	<b>DX 403 Plan as Passed</b>	<b>C45 McClammy Plan</b>	<b>C42 Buskey Reap. 4 (ADC Plan)</b>	<b>C46 Knight Plan</b>	<b>APSX36 ALBC Plan</b>	<b>APSX36 ALBC Plan Deviation</b>
1	14.90	17.63	17.63	17.60	4.86	3.29
2	3.97	1.98	2.06	2.48	15.25	0.37
3	23.74	18.53	18.62	23.62	18.89	-5.44
4	12.75	8.77	11.44	15.14	1.38	-1.76
5	12.42	10.23	9.73	9.44	15.14	-1.56
6	16.58	30.60	26.45	27.59	54.27	-3.27
7	3.85	16.70	11.19	2.34	8.41	4.74
8	20.00	25.62	24.46	24.74	24.79	-4.66
9	1.89	2.55	11.86	6.24	6.58	-2.35
10	16.18	13.41	14.11	5.56	16.07	-3.19
11	0.58	0.39	0.47	0.61	0.58	-3.34
12	1.47	1.51	1.47	1.68	1.71	-2.92
13	6.27	6.35	1.45	5.65	5.12	4.96
14	2.64	2.98	7.11	12.20	27.72	-4.52
15	13.78	10.31	9.38	10.13	9.37	3.62
16	10.38	10.08	9.00	7.52	7.34	4.64
17	4.18	3.38	2.76	6.24	6.24	-0.40
18	5.38	4.39	4.39	4.27	4.32	-5.35
19	61.25	67.07	67.01	75.39	58.27	-4.51
20	3.84	3.67	3.12	10.88	4.25	-4.67
21	8.51	26.87	29.64	20.06	18.75	-4.89
22	5.74	6.89	6.30	16.96	11.31	-4.33
23	3.80	3.73	3.72	3.51	3.51	-4.12
24	1.50	1.50	1.46	1.00	1.00	-3.17
25	15.99	19.05	15.60	22.71	18.26	0.72
26	1.55	1.44	1.52	1.57	1.51	3.10
27	1.51	1.70	1.65	0.91	1.70	1.25
28	29.35	16.49	17.52	29.04	29.56	3.66
29	3.50	16.92	16.31	2.12	2.22	2.94
30	4.37	3.88	5.93	3.97	3.59	3.24
31	15.85	20.96	21.06	8.75	18.20	-3.68
32	60.05	58.40	56.68	21.65	52.35	1.23
33	21.22	22.34	21.30	19.27	21.76	2.02
34	1.73	1.57	1.86	0.73	1.47	2.27
35	16.08	13.48	14.98	36.43	16.21	4.89

House District	DX 403 Plan as Passed	C45 McClammy Plan	C42 Buskey Reap. 4 (ADC Plan)	C46 Knight Plan	APSX36 ALBC Plan	APSX36 ALBC Plan Deviation
36	12.19	12.44	10.46	10.42	8.89	3.92
37	29.31	23.74	20.85	19.67	12.33	-2.88
38	17.93	18.31	29.41	16.31	38.55	1.56
39	5.23	4.26	4.24	12.33	4.52	2.41
40	13.25	11.79	13.46	38.94	17.90	4.85
41	11.97	14.08	16.04	10.09	10.02	0.62
42	10.97	10.08	11.93	9.69	9.69	-4.13
43	6.64	6.55	8.09	8.52	6.09	-3.09
44	11.48	19.96	27.02	9.69	24.47	3.24
45	15.18	9.49	7.86	13.37	13.30	3.46
46	7.53	6.09	6.94	21.97	11.47	0.84
47	20.13	16.96	16.48	6.78	17.53	3.34
48	5.65	10.05	9.93	10.46	11.78	4.22
49	12.92	13.30	11.33	62.65	7.45	-0.23
50	8.41	8.57	9.09	5.77	6.42	3.37
51	5.88	14.09	7.83	7.32	9.75	4.41
52	60.13	62.27	61.34	54.07	57.42	4.53
53	55.83	62.00	56.61	55.86	41.60	4.40
54	56.83	31.46	31.40	58.72	61.06	2.77
55	73.55	62.92	66.66	64.03	59.44	4.95
56	62.14	61.06	58.16	54.02	61.13	4.22
57	68.47	62.27	61.89	60.27	66.10	2.53
58	72.76	66.20	76.98	61.09	62.60	3.76
59	76.72	66.62	64.85	61.27	60.01	2.85
60	67.68	62.26	65.38	59.55	56.90	0.84
61	18.89	25.02	18.43	14.41	45.44	-0.19
62	15.50	15.12	16.53	17.99	23.62	-1.20
63	13.41	24.15	20.47	22.08	14.02	4.35
64	14.22	12.76	34.38	31.91	14.81	-3.52
65	23.98	29.45	26.59	14.81	31.33	-3.10
66	25.16	28.20	6.00	2.54	28.79	-2.39
67	69.15	69.21	68.63	69.43	69.43	-3.74
68	64.56	53.87	55.19	25.43	53.30	-4.78
69	64.21	57.56	56.92	57.62	50.61	-4.35
70	62.03	61.18	61.66	57.21	57.21	0.71
71	66.90	60.42	59.43	54.45	63.82	2.06
72	64.60	60.37	55.37	56.25	62.65	-4.34
73	10.23	22.54	38.20	83.58	14.99	-4.13

House District	DX 403 Plan as Passed	C45 McClammy Plan	C42 Buskey Reap. 4 (ADC Plan)	C46 Knight Plan	APSX36 ALBC Plan	APSX36 ALBC Plan Deviation
74	24.52	27.36	39.83	26.18	33.73	1.52
75	26.43	30.03	21.78	20.14	43.35	-1.20
76	73.79	75.62	64.36	24.45	63.79	1.85
77	67.04	67.34	62.31	59.38	65.61	4.00
78	69.99	73.03	74.21	58.70	66.92	-2.31
79	11.62	14.12	13.55	32.55	13.30	-1.43
80	17.19	17.32	17.51	15.08	17.41	-2.20
81	19.86	28.96	25.39	5.60	19.72	-4.37
82	62.14	61.14	57.22	53.63	66.46	4.84
83	57.52	61.87	55.99	13.30	38.58	-3.41
84	52.35	51.40	52.00	26.29	55.17	-3.72
85	50.08	47.96	53.94	54.21	49.21	-2.11
86	13.46	16.11	14.59	40.50	15.38	-3.28
87	8.86	8.45	8.82	25.83	9.28	-4.36
88	18.23	14.11	16.70	71.97	11.58	-4.93
89	32.00	30.47	30.25	17.38	23.20	4.96
90	34.65	29.39	39.63	56.29	9.44	-2.79
91	15.73	15.59	18.03	18.05	18.29	-4.98
92	12.64	14.54	13.15	10.79	11.61	-2.33
93	17.11	19.07	13.81	8.17	17.91	4.20
94	8.21	8.35	8.87	10.76	5.86	3.42
95	4.94	4.87	4.86	6.84	6.84	1.04
96	10.23	11.37	11.22	5.26	10.37	-0.54
97	60.66	63.00	63.59	57.19	57.19	-1.21
98	60.02	60.22	61.57	63.75	60.45	1.05
99	65.61	62.92	63.55	57.98	58.50	1.20
100	14.98	14.12	10.31	18.89	13.81	4.12
101	17.02	20.83	22.65	62.45	19.48	3.43
102	7.90	8.80	8.12	10.67	12.73	-2.70
103	65.06	62.08	63.03	17.92	63.16	-0.83
104	15.79	13.42	13.30	12.33	18.68	0.39
105	9.06	10.18	10.30	13.49	8.88	1.80

Senate District by % Black Population	DX 400 Plan as Passed	C47 Sanders Plan	C48 Buskey Reap. Plan (ADC Plan)	APSX27 ALBC Plan	APSX27 ALBC Plan Deviation
1	10.98	10.55	12.75	9.68	-2.19
2	24.40	19.69	13.86	14.54	3.87
3	13.68	11.11	10.90	11.11	-4.55
4	1.74	1.17	1.43	1.17	0.85
5	6.41	9.51	3.41	11.09	4.76
6	15.04	11.09	7.05	10.55	2.80
7	27.34	41.26	47.17	6.09	-3.90
8	3.28	2.56	2.90	2.48	-3.82
9	1.52	5.91	4.61	45.69	-2.48
10	12.27	6.07	13.04	5.79	2.45
11	14.96	26.67	33.76	8.89	4.14
12	20.10	11.29	11.99	14.22	2.76
13	20.64	27.79	26.65	25.25	1.41
14	14.08	14.81	11.71	13.56	4.50
15	14.49	11.53	8.24	24.64	0.67
16	11.83	12.48	11.81	14.03	-3.59
17	5.36	6.66	7.31	6.18	-3.10
18	59.10	58.49	61.32	59.80	-3.73
19	65.31	65.30	62.89	66.55	-3.53
20	63.15	62.82	65.10	63.68	-3.88
21	15.50	17.29	16.96	17.29	1.26
22	21.52	20.43	29.66	19.97	2.16
23	64.84	57.75	61.23	54.19	1.47
24	63.22	56.90	60.43	60.42	2.82
25	22.82	34.06	28.89	44.89	1.49
26	75.13	71.28	68.44	56.91	1.75
27	21.15	22.75	20.16	22.75	2.70
28	59.83	51.55	60.38	50.24	-4.75
29	15.01	18.77	13.24	21.92	3.23
30	21.95	18.63	14.90	21.01	1.50
31	19.40	23.63	19.83	23.19	-1.61
32	7.84	7.74	7.81	7.74	-0.11
33	71.64	71.83	65.83	62.83	-0.09
34	12.69	14.17	11.34	13.95	1.93
35	19.11	18.87	25.12	27.56	0.58

**Exhibit 2**

Comparison of minority in percentages in 2001 districts (using 2010 census data) and 2012 districts. The source for the information is Ex. SPX 403 and 406 (for House districts) and SPX 400 and 402 (for Senate districts)

<b>House District</b>	<b>%Black 2002 Plan (w/ 2010 census data)</b>	<b>% Black Act 2012-603 Plan</b>	<b>Difference</b>	<b>Absolute Difference</b>
1	17.63	14.90	-2.73	2.73
2	2.04	3.97	1.93	1.93
3	19.06	23.74	4.68	4.68
4	9.58	12.75	3.17	3.17
5	9.91	12.42	2.51	2.51
6	30.36	16.58	-13.78	13.78
7	9.68	3.85	-5.83	5.83
8	25.99	20.00	-5.99	5.99
9	2.36	1.89	-0.47	0.47
10	16.22	16.18	-0.04	0.04
11	0.44	0.58	0.14	0.14
12	1.53	1.47	-0.06	0.06
13	7.04	6.27	-0.77	0.77
14	3.63	2.64	-0.99	0.99
15	15.91	13.78	-2.13	2.13
16	10.73	10.38	-0.35	0.35
17	2.93	4.18	1.25	1.25
18	4.39	5.38	0.99	0.99
19	69.82	61.25	-8.57	8.57
20	3.12	3.84	0.72	0.72
21	27.09	8.51	-18.58	18.58
22	5.78	5.74	-0.04	0.04
23	3.80	3.80	0.00	0.00
24	1.47	1.50	0.03	0.03
25	16.17	15.99	-0.18	0.18
26	1.40	1.55	0.15	0.15
27	1.65	1.51	-0.14	0.14
28	18.23	29.35	11.12	11.12
29	17.38	3.50	-13.88	13.88
30	3.96	4.37	0.41	0.41
31	21.06	15.85	-5.21	5.21
32	59.34	60.05	0.71	0.71

House District	%Black 2002 Plan (w/ 2010 census data)	% Black Act 2012-603 Plan	Difference	Absolute Difference
33	23.83	21.22	-2.61	2.61
34	1.42	1.73	0.31	0.31
35	15.45	16.08	0.63	0.63
36	13.90	12.19	-1.71	1.71
37	20.85	29.31	8.46	8.46
38	29.95	17.93	-12.02	12.02
39	4.26	5.23	0.97	0.97
40	11.47	13.25	1.78	1.78
41	10.92	11.97	1.05	1.05
42	11.46	10.97	-0.49	0.49
43	7.36	6.64	-0.72	0.72
44	29.43	11.48	-17.95	17.95
45	35.63	15.18	-20.45	20.45
46	8.92	7.53	-1.39	1.39
47	16.25	20.13	3.88	3.88
48	8.63	5.65	-2.98	2.98
49	11.92	12.92	1.00	1.00
50	9.69	8.41	-1.28	1.28
51	12.94	5.88	-7.06	7.06
52	60.11	60.13	0.02	0.02
53	55.70	55.83	0.13	0.13
54	56.73	56.83	0.10	0.10
55	73.55	73.55	0.00	0.00
56	62.13	62.14	0.01	0.01
57	68.42	68.47	0.05	0.05
58	77.86	72.76	-5.10	5.10
59	67.03	76.72	9.69	9.69
60	67.41	67.68	0.27	0.27
61	30.39	18.89	-11.50	11.50
62	23.21	15.50	-7.71	7.71
63	23.79	13.41	-10.38	10.38
64	25.63	14.22	-11.41	11.41
65	26.91	23.98	-2.93	2.93
66	27.26	25.16	-2.10	2.10
67	69.14	69.15	0.01	0.01
68	62.55	64.56	2.01	2.01
69	64.16	64.21	0.05	0.05
70	61.83	62.03	0.20	0.20



House District	%Black 2002 Plan (w/ 2010 census data)	% Black Act 2012-603 Plan	Difference	Absolute Difference
71	64.28	66.90	2.62	2.62
72	60.20	64.60	4.40	4.40
73	48.44	10.23	-38.21	38.21
74	30.32	24.52	-5.80	5.80
75	27.61	26.43	-1.18	1.18
76	69.54	73.79	4.25	4.25
77	73.52	67.04	-6.48	6.48
78	74.26	69.99	-4.27	4.27
79	14.09	11.62	-2.47	2.47
80	23.42	17.19	-6.23	6.23
81	26.25	19.86	-6.39	6.39
82	57.13	62.14	5.01	5.01
83	56.92	57.52	0.60	0.60
84	50.61	52.35	1.74	1.74
85	47.94	50.08	2.14	2.14
86	16.68	13.46	-3.22	3.22
87	8.93	8.86	-0.07	0.07
88	16.53	18.23	1.70	1.70
89	32.53	32.00	-0.53	0.53
90	35.54	34.65	-0.89	0.89
91	16.74	15.73	-1.01	1.01
92	12.97	12.64	-0.33	0.33
93	17.83	17.11	-0.72	0.72
94	7.12	8.21	1.09	1.09
95	5.65	4.94	-0.71	0.71
96	12.39	10.23	-2.16	2.16
97	60.66	60.66	0.00	0.00
98	65.22	60.02	-5.20	5.20
99	73.35	65.61	-7.74	7.74
100	13.98	14.98	1.00	1.00
101	24.89	17.02	-7.87	7.87
102	12.07	7.90	-4.17	4.17
103	69.64	65.06	-4.58	4.58
104	15.35	15.79	0.44	0.44
105	10.66	9.06	-1.60	1.60
Average	28.39	26.22	-2.17	3.76

<b>Senate District</b>	<b>% Black 2002 Plan (2010 census)</b>	<b>% Black Act 2012-603 Plan</b>	<b>Difference</b>	<b>Absolute Difference</b>
1	12.83	10.98	-1.85	1.85
2	19.01	24.40	5.39	5.39
3	13.56	13.68	0.12	0.12
4	3.85	1.74	-2.11	2.11
5	9.80	6.41	-3.39	3.39
6	5.85	15.04	9.19	9.19
7	32.14	27.34	-4.80	4.80
8	2.92	3.28	0.36	0.36
9	1.96	1.52	-0.44	0.44
10	13.36	12.27	-1.09	1.09
11	33.95	14.96	-18.99	18.99
12	12.07	20.10	8.03	8.03
13	20.30	20.64	0.34	0.34
14	12.01	14.08	2.07	2.07
15	12.73	14.49	1.76	1.76
16	11.35	11.83	0.48	0.48
17	8.21	5.36	-2.85	2.85
18	59.92	59.10	-0.82	0.82
19	71.59	65.31	-6.28	6.28
20	77.82	63.15	-14.67	14.67
21	25.07	15.50	-9.57	9.57
22	28.30	21.52	-6.78	6.78
23	64.76	64.84	0.08	0.08
24	62.78	63.22	0.44	0.44
25	28.57	22.82	-5.75	5.75
26	72.69	75.13	2.44	2.44
27	25.24	21.15	-4.09	4.09
28	50.98	59.83	8.85	8.85
29	14.99	15.01	0.02	0.02
30	29.17	21.95	-7.22	7.22
31	23.90	19.40	-4.50	4.50
32	6.05	7.84	1.79	1.79
33	64.85	71.64	6.79	6.79
34	13.16	12.69	-0.47	0.47
35	36.35	19.11	-17.24	17.24
Average	28.06	26.21	-1.85	4.60

### **Exhibit 3**

#### **Analysis of Precinct splits**

The following spreadsheets, one for each challenged district, demonstrate the effect on racial percentages if split precincts are put back together, either by adding the population of the portion that was put in another district, or by subtracting the population of the portion that was put into the subject district.

The spreadsheets were prepared with data from the following trial exhibits:

- SDX 401      Racial composition of Existing Senate districts
- SDX 403      Racial composition of Existing House districts
- SDX 405      Racial composition for each portion of split precincts in the House
- SDX 475      Racial composition for each portion of split precincts in the Senate
- APSX 44      List of split precincts and districts receiving portions thereof

The first spreadsheet in this exhibit is a summary that charts for each district comparing the percentage of Black persons in the districts “as is” and the percentage of Black persons in the “Revised” district (after precincts are put back together). Next appears a spreadsheet for each challenged House district, in order by district number, followed by a spreadsheet for each challenged Senate district, in order by district number.

**Summary**

	<b><u>As is</u></b>	<b><u>Un-split</u></b>	<b><u>Net</u></b>
SD18	59.1	59.4	0.3
SD19	65.3	64.8	-0.5
SD20	63.1	61.9	-1.2
SD23	64.8	63.6	-1.2
SD24	63.2	62.4	-0.8
SD26	75.1	73.1	-2.0
SD28	59.8	54.8	-5.0
SD33	71.6	70.8	-0.8
HD19	61.2	59.9	-1.3
HD32	60.0	53.4	-6.6
HD52	60.1	64.5	4.4
HD53	55.8	55.9	0.1
HD54	56.8	62.4	5.6
HD55*	73.6	73.5	-0.1
HD56	62.1	61.3	-0.8
HD57	68.5	66.6	-1.9
HD58	72.8	71.3	-1.5
HD59	76.7	77.6	0.9
HD60	67.7	72.5	4.8
HD67*	69.1	68.9	-0.2
HD68	64.6	57.9	-6.7
HD69	64.2	66.7	2.5
HD70	62.0	63.1	1.1
HD71	66.9	67.5	0.6
HD72	64.6	62.6	-2.1
HD76*	73.8	79.0	5.2
HD77	67.0	67.9	0.9
HD78	69.9	69.0	-0.9
HD82*	62.1	63.9	1.8
HD83	57.5	49.8	-7.7
HD84	52.3	52.3	0.0
HD85	50.1	35.8	-14.3
HD97	60.7	64.8	4.1
HD98	60.0	64.9	4.9
HD99	65.6	69.0	3.4
HD103	65.1	68.3	3.2
AVG			-0.42

**House District 19**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45081	14733	27614	2734
Target Pop	45521			
Deviation	-0.967			
Percentage by race		0.327	0.612	0.0606

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45758	15325	27390	3043
Target Pop	45521			
Deviation	0.520			
Percentage by race		0.335	0.599	0.0665

**Precinct splits**

Blackburn Chapel CP	-1068	-781	-156	(to HD6 and HD53)
Chapman Mid Sch	-6	-113	-2	(to HD21)
Chase Valley UMC	-1528	-949	-137	(to HD21)
Ch of Christ Meridianville	3147	+448	+174	(from HD21)
Ed White Mid Sch	-1061	-2653	-178	(to HD53)
Grace UMC	+3151	+1436	+565	(from HD6 and HD25)
Harvest Baptist	+755	+373	+68	(from HD6)
Highlands School	-199	-358	+39	(to HD53)
Lewis Chapel CP Ch	+113	+562	+21	(from HD19)
Mad Co Teacher Resource Ctr	-145	-37	-11	(to HD21)
Meridianville 1st Baptist	-377	-378	-49	(to HD21)
Pineview Baptist	-3643	-2010	-388	(to HD6)
Sherwood Baptist	-515	-801	-213	(to HD25 and HD6)
St. Luke Missionary Baptist	+1968	+5037	+576	(from HD53)
Net	592	-224	309	

**House District 32**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45504	16523	27326	1655
Target Pop	45521			
Deviation	-0.0373			
Percent by race		0.363	0.600	0.0364

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45741	19598	24408	1735
Target Pop	45521			
Deviation	0.483			
Percent by race		0.428	0.534	0.0379

**Precinct splits**

2nd Presby/Mental Health	-1647	-1436	-155	(to HD36)
Anniston	+1954	+244	+201	(from HD36 and 40)
Eulaton/Bynum/W Park Hts Bapt	-1929	-328	-64	(to HD35, 36, 40)
Eastaboga Comm Ctr/Old Lincoln High gym	-1908	-1022	-93	(to HD35, 33, 36)
Limbaugh Comm Ctr-Bon Air-Oak Grove	+6694	+2263	+311	(from HD33)
Mabra-Kingston Bapt-Talla Co Central High	+310	+48	+8	(from HD35)
Old Mumford High	-133	-409	-10	(to HD35)
Renfro Fire Hall-Stemley Fire Hall	-950	-966	-50	(to HD33)
Talladega Nat Guard Armory	-1162	-1958	-104	(to HD35)
Waldo City Hall	-28	-29	-2	(to HD35)
Winterboro Vol Fire	+1647	+285	+27	(from HD33 and 35)
Bethel Baptist	+227	+390	+11	(from HD33)
Net	3075	-2918	80	

**House District 52**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45083	14808	27109	3166
Target Pop	45521			
Deviation	-0.962			
Percent by race		0.328	0.601	0.070

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45822	13054	29556	3212
Target Pop	45521			
Deviation	0.661			
Percent by race		0.285	0.645	0.071

**Precinct splits**

Birmingham Botanical	-380	-4	-5	(to HD46)
Ctr Street Mid Sch	+48	+2432	+67	(from HD55)
Green Springs Bapt Ch	+452	+103	+25	(from HD55)
Ramsey HS	-958	-63	-62	(to HD55, 60)
Shades Cahaba Elem Sch	-1078	-69	-51	(to HD46)
Southside Branch Pub Lib	+162	+48	+72	(from HD60)
Net	-1754	2447	46	

**House District 53**

<u>Existing</u>		<u>White</u>	<u>Black</u>	<u>Other</u>
Total Pop	45106	14468	25184	5454
Target Pop	45521			
Deviation	0.912			
Percent by race		0.321	0.558	0.121

<u>Revised</u>		<u>White</u>	<u>Black</u>	<u>Other</u>
Total Pop	45124	14921	25227	4976
Target Pop	45521			
Deviation	-0.872			
Percent by race		0.331	0.559	0.110

**Precinct splits**

Eastside Comm Ctr.	+419	+63	+19	(from HD21)
Ed White Mid Sch	+1061	+2653	+176	(from HD19)
Fire and Rescue Acad	-837	-1710	-123	(to HD21)
Highlands School	+199	+358	+39	(from HD19)
Lewis Chapel CP Ch	+93	+99	+16	(from HD19)
Ridgecrest Sch	-1289	-1079	-485	(to HD10)
Sr Ctr	-1353	-1032	-651	(to HD10)
St. Luke Missionary Baptist	+54	+107	+11	(from HD19)
University Place School	+1312	+221	+198	(from HD6)
Westland Mid Sch	+794	+363	+322	(from HD6)
Net	453	43	-478	



**House District 54**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45070	17406	25612	2052
Target Pop	45521			
Deviation	-0.991			
Percent by race		0.386	0.568	0.045

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45583	15092	28467	2024
Target Pop	45521			
Deviation	0.136			
Percent by race		0.331	0.624	0.044

**Precinct splits**

Brewster Rd. Baptist	-2562	-3482	-264	(to HD58)
Ctr. Point Cthse Annex	+2377	+3911	+203	(from HD58, 59)
Clearview Baptist	-155	-396	-10	(to HD58, 44)
Crestwood Comm. Educ	+1	+5	0	(from HD 59)
First UMC of Ctr. Pnt.	-387	-648	-85	(to HD58)
Gate City Elementary	+57	+2171	+22	(from HD58, 59)
Irondale Sr. Cit. Building	-1667	-621	-522	(to HD44, 45)
Morton Simpson Comm. Ctr.	-77	-59	-3	(to HD59)
Mountain View Baptist	-584	-410	-44	(to HD44)
Norwood Comm. Ctr.	+57	+874	+24	(from HD59)
Oporto Armory	-14	-291	-3	(to HD58, 59)
Our Lady of Lourdes Catholic	-64	-87	-3	(to HD58)
Robinson Elementary	-79	-338	-7	(to HD58, 59)
Southtown Housing Comm. Ctr	+204	+37	+58	(from HD60)
Wilkerson Mid Sch	+50	+475	+62	(from HD60)
Willow Wood Rec Ctr	+529	+1714	+544	(from HD59)
Net	-2314	2855	-28	

**House District 55**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45071	9690	33150	2231
Target Pop	45521			
Deviation	-0.99			
Percent by race		0.215	0.736	0.0495

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45565	10122	33962	2111
Target Pop	45521			
Deviation	0.097			
Percent by race		0.217	0.735	0.0474

**Precinct splits**

Legion Field Lobby	-49	-2069	-34	(to HD60)
Adamsville Sr Cit	-957	-1253	-80	(to HD57, 60)
Ctr Street Mid School	+7	+656	+4	(from HD52)
Glen Iris Elem	+466	+233	+90	(from HD60)
Gren Spr Bapt Ch	-452	-103	-227	(to HD52)
Ramsey HS	+1105	+135	+79	(from HD52, 60)
Sandusky Comm Sr	-76	-17	+59	(to HD60)
South Hampton Elem	+173	+2768	+36	(from HD60)
Adamsville Bapt Ch	+215	+462	+12	
Net		432	812	-120

**\*Note** -- this district could not be brought within deviation without precinct splits

**House District 56**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45071	14496	28008	2567
Target Pop	45521			
Deviation	-0.989			
Percent by race		0.322	0.621	0.057

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45588	15187	27964	2437
Target Pop	45521			
Deviation	0.147			
Percent by race		0.333	0.613	0.053

**Precinct splits**

Brooklane Comm Ctr	-896	-592	-71	(to HD57)
Canaan Bapt Ch	+2728	+779	+145	(from HD15)
Hunter Street Bapt Ch	-1142	-337	-206	(to HD15, 46)
Mount Olive Bapt Ch	+1	+106	+2	(from HD57)
Net	691	-44	-130	

**House District 57**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45071	13105	30859	1107
Target Pop	45521			
Deviation	-0.989			
Percent by race		0.2913	0.685	0.0255

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45906	14067	30570	1269
Target Pop	45521			
Deviation	0.846			
Percent by race		0.306	0.666	0.028

**Precinct splits**

Adamsville Baptist	+2287	+780	+88	(from HD55)
Adamsville Sr Cit Bldg	+997	+1261	+82	(from HD60, 55)
Brooklane Comm Ctr	+896	+592	+71	(from HD56)
Mount Olive Bapt Ch	+20	+528	+2	(from HD56)
Pleasant Grove First Bapt Ch	-3238	-3450	-81	(to HD15)
Net	962	-289	162	

**House District 58**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45088	10790	32806	1492
Target Pop	45521			
Deviation	0.951			
Percent by race		0.239	0.728	0.0331

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45542	11410	32479	1653
Target Pop	45521			
Deviation	0.046			
Percent by race		0.251	0.713	0.036

**Precinct splits**

Barrett Elem Sch	+77	+909	+34	(from HD59)
Brewster Road Bapt	-191	-512	-9	(to HD54)
Ctr Point Cthse Annex	-2295	-3779	-173	(to HD54, 59)
Clearview Baptist	-487	-232	-19	(to HD44, 54)
First UMC of Ctr Point	-676	-2165	-102	(to HD54)
Gate City Elem Sch	+19	+291	+3	(from HD54, 59)
Hilldale Baptist	+440	+2454	+98	(from HD59)
Oporto Armory	+38	+671	+27	(from HD54, 59)
Our Lady of Lourdes Cath	+64	+87	+3	(from HD54)
Pinson UMC	+3310	+2705	+269	(from HD 44, 51, 59)
Robinson Elem Sch	+582	+1728	+73	(from HD54, 59)
Sun Valley Elem Sch	-261	-2484	-43	(to HD59)
Net		620	-327	161

**House District 59**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45218	8046	34691	2491
Target Pop	45521			
Deviation	0.666			
Percent by race		0.178	0.767	0.055

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45108	7650	34998	2470
Target Pop	45521			
Deviation	0.907			
Percent by race		0.170	0.776	0.055

**Precinct splits**

Barrett Elem School	-77	-909	-34	(to HD58)
Ctr. Point Cthse Annex	-82	-132	0	(to HD58, 54)
Crestwood Comm Educ	-1	-5	0	(to HD54)
Gate City Elem Sch	+38	+1908	+19	(from HD58, 54)
Hilldale Baptist	-440	-2454	-55	(to HD58)
Morton S. Comm Ctr	+77	+59	+3	(from HD54)
Norw. Comm Ctr	+51	+1169	+12	(from HD54)
Oporto Armory	-24	-380	-24	(to HD54, 58)
Pinson UMC	-616	-2148	-99	(to HD51, 44, 58)
Robinson Elem. Sch	+679	+2879	+100	(from HD58, 54)
Sun Valley Elem Sch	-184	-1394	-32	(to HD58)
Willow Wood Rec Ctr	+183	1714	+89	(from HD54)
Net	-396	307	-21	

**House District 60**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45084	12991	30514	1579
Target Pop	45521			
Deviation	-0.96			
Percent by race		0.288	0.677	0.035

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45509	11156	33014	1339
Target Pop	45521			
Deviation	-0.026			
Percent by race		0.245	0.725	0.029

**Precinct splits**

Adamsville Sr Cit Bldg	-40	-8	-2	(to HD57, 55)
Fultondale Sr Cit Bldg	-663	-139	-56	(to HD51)
Gardendale Civic Ctr	-297	-295	-32	(to HD51)
Glen Iris Elem Sch	-466	-233	-90	(to HD55)
Legion Field Lobby	+49	2609	+34	(from HD55)
Ramsey HS	-147	-72	-18	(to HD55, 52)
Sandusky Comm St Cit Park	+76	+17	+0	(from HD55)
South Hampton Elem	+11	+75	+3	(from HD55)
Southside Branch Pub Lib	-162	-48	-72	(to HD52)
Southtown Housing Com. Ctr	-204	-37	-58	(to HD54)
Wilkerson Mid Sch	+8	+631	+51	(from HD54)
Net	-1835	2500	-240	

**House District 67**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45078	13262	31172	644
Target Pop	45521			
Deviation	-0.973			
Percent by race		0.294	0.691	0.014

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	44719	13266	30819	634
Target Pop	45521			
Deviation	-1.762			
Percent by race		0.297	0.689	0.014

**Precinct splits**

Nat Guard Armory	-28	-180	-1 (to HD72)
Pinetucky	+110	+8	+2 (from HD72)
UCH-Airport-Armory	-37	-69	-2 (to HD72)
Uniontown City Hall-Airport	-41	-112	-9 (to Hd72)
Net	4	-353	-10

\*Note -- this district could not be brought within deviation without precinct splits



**House District 68**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45069	15092	29097	880
Target Pop	45521			
Deviation	-0.993			
Percent by race		0.335	0.646	0.020

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45258	15143	26185	910
Target Pop	45521			
Deviation	-0.578			
Percent by race		0.335	0.579	0.020

**Precinct splits**

Tensaw Vol. Fire Dept	+10	+2	0	(from HD64)
Vaughn Comm Ctr	+240	+43	+21	(from HD64)
BASHI Meth Ch	-1339	-1056	-45	(to HD65)
Fulton city Hall	+865	+47	+20	(from HD65)
Jackson City Hall	+209	+47	+11	(from HD65)
Old Engineers Bldg	-210	-279	+6	(to HD65)
Overstreet Grocery	+228	+50	+8	(from HD65)
Skipper Fire Station	+3050	+797	+96	(from HD65)
Thomasville Nat G Armory	+131	+11	0	(from HD65)
Brownville Fire Dept	-18	-22	0	(to HD90)
Castleberry Fire Dept	-32	-191	-2	(to HD90)
Lyeffion Fire Dept	+312	+88	+7	(from HD90)
Nazarene Bapt Ch	+6	+47	0	(from HD90)
Repton City Hall	+289	+45	11	(from HD90)
Second Mount Zion Ch	-18	-51	-1	(to HD90)
Cornerstone Ch	+806	+298	+17	(from HD65)
Demopolis HS	-14	-15	0	(to HD72, 71)
Dixon's Mill	+215	+17	+2	(from HD65)
Octagon	+169	+48	+1	(from HD65)
Springhill Voting Booth	-76	-20	0	(to HD71)
Thomaston	-168	-400	-12	(to HD65)
VFW	+280	+28	+20	(from HD65)
Dayn Inn/ Ollie	-177	-244	-14	(to HD64)
Excel/Coleman	-84	-83	-6	(to HD64)
Frisco Cty FD	-597	-652	-37	(to HD64)
Mexia Fire Dept	-291	-223	-25	(to HD64)
Monroeville Armory	-1191	-1036	-57	(to HD64)

Monroeville Housing Authority	+46	0	+1 (from HD 64)
Oak Grove Bapt	-13	-9	0 (to HD64)
Purdue Hill	+18	0	+1 (from HD64)
Shiloh/Grimes	+25	+1	0 (from HD64)
Carson/Preswick	+270	+56	+3 (from HD65)
Cortelyou	+203	+96	+10 (from HD65)
McIntosh Comm Ctr	+18	+8	0 (from HD65)
McIntosh Voting House	-91	-360	-6 (to HD65)
Net	3071	-2912	30

**House District 69**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45477	15056	29201	1220
Target Pop	45521			
Deviation	-0.097			
Percent by race		0.331	0.642	0.027

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45331	13988	30235	1108
Target Pop	45521			
Deviation	-0.417			
Percent by race		0.309	0.667	0.024

**Precinct splits**

Booth Vol Fire Dept.	-556	-229	-13	(to HD42)
Safe Harbor Ministries	-263	-245	-2	(to HD42, 88)
1F Al. Ind Dev Training	0	-4	0	(to HD76)
2D Montgomery Boys Club	-397	-422	-34	(to HD78)
2F Fire Station No. 14	+31	+687	+11	(from HD78)
2G Hayneville Road Comm Ctr	+27	+1713	+28	(from HD78)
2I Southlawn Elem Sch	-82	-354	-2	(to HD78)
5B Snowdoun Womens Club	-51	-3	-1	(to HD76, 75)
5D Ramer Library	+437	+269	+40	(from HD90)
5E Fitzpatrick Elem	-331	-2276	-177	(to HD76, 75)
5N Peter Crump Sch	+117	+1898	+38	(from HD76)
Net	-1068	1034	-112	

**House District 70**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45970	15424	28515	2031
Target Pop	45521			
Deviation	0.986			
Percent by race		0.336	0.620	0.044

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45159	14553	28510	2096
Target Pop	45521			
Deviation	-0.795			
Percent by race		0.322	0.631	0.046

**Precinct splits**

Bama Mall	+616	+181	+52	(from HD63, 71)
Holt Armory	+1525	+354	+153	(from HD62)
Jayces Park	+29	0	0	(from HD63)
McDonald Hughes Ctr	+46	+588	+10	(from HD71)
McFarland Mall	-5680	-7119	-359	(to HD63, 62)
Peterson Meth Ch	+2027	+173	+74	(from HD62)
Southside Comm Ctr	+17	+19	0	(from HD71)
Stillman College	+301	+5646	+55	(from HD71)
University Mall	+248	+153	+80	(from HD62)
Net	-871	-5	65	

**House District 71**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45348	14214	30337	797
Target Pop	45521			
Deviation	-0.380			
Percent by race		0.313	0.669	0.0176

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45078	13705	30419	954
Target Pop	45521			
Deviation	-0.973			
Percent by race		0.304	0.675	0.021

**Precinct splits**

Butler-Lavaca	-11	-120	0	(to HD65)
Crossroads-Intersection	+15	0	0	(from HD65)
Lisman-Pushmataha	-90	-817	-11	(to HD65)
Riderwood-Rock Spr	+361	+195	+3	(from HD65)
Eutaw Pre-School	-50	-489	-1	(to HD72)
Greene County Cths	+20	+87	0	(from HD72)
W Greene Fire Dept	-65	-73	-7	(to HD61)
Demopolis HS	+19	+34	0	(from HD72, 68)
Jefferson	-86	-544	-7	(to HD65)
Rangeline	+243	+74	+11	(from HD65)
Springhill Voting Booth	-205	-49	-1	(to HD68)
Aliceville 2 Nat'l G Armory	+345	+1337	+32	(from HD61)
Carrollton 4 Service Ctr	-396	-677	-35	(to HD61)
Coatopa Fire Dept	+127	+191	0	(from HD72)
Livingston Comm Ctr	-143	-178	-2	(to HD72)
Bama Mall	+2835	+3167	+402	(from HD63, 70)
County Courthouse	-45	-116	-2	(to HD63)
Frierson-Big Sandy Baptist	-1037	-706	-48	(to HD62)
McDonald Hughes Ctr	-46	-588	-10	(to HD70)
Northport Comm Ctr	-2291	-1700	-175	(to HD61)
Stillman College	+8	+1073	+8	(from HD70)
Southside Comm Ctr	-17	-19	0	(to HD70)
Net	-509	82	157	

**House District 72**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45346	15396	29293	657
Target Pop	45521			
Deviation	-0.384			
Percent by race		0.340	0.646	0.027

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45126	16161	28227	738
Target Pop	45521			
Deviation	-0.868			
Percent by race		0.358	0.626	0.016

**Precinct splits**

Brent City Hall	-1096	-2345	-38	(to HD49)
Brent Nat G Armory	+1921	+422	+93	(from HD49)
Eoline Fire Dept 13/14	-97	-87	-5	(to HD49)
Eoline Fire Dept 4/5	+88	0	+2	(from HD49)
Rock Bldg 15/16	-172	-211	-8	(to HD49)
Rock Bldg 6/7	-327	-81	+28	(to HD49)
Eutaw Pre-School	+50	+489	+1	(from HD71)
Greene County Cths	+14	+21	0	(from HD71)
Demopolis HS	-5	-19	0	(to HD71, 68)
Nat Guard Armory	+28	+180	+1	(from HD67)
Pinetucky	+95	+82	+3	(from HD67)
UCH-Airport-Armory	+37	+69	+2	(from HD67)
Uniontown City Hall	+41	+112	0	(from HD67)
Coatopa Fire Dept	+45	+124	0	(from HD71)
Livingston Comm Ctr	+143	+178	+2	(from HD71)
Net	765	-1066	81	

**House District 76**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45972	8953	33925	3094
Target Pop	45521			
Deviation	0.991			
Percent by race		0.195	0.738	0.067

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	46078	6885	36417	2776
Target Pop	45521			
Deviation	1.224			
Percent by race		0.149	0.790	0.060

**Precinct splits**

1A Cloverdale Comm Ctr	-1743	-800	-114	(to HD77)
1E Aldersgate UMC	+1207	+5363	+318	(from HD77)
1F Al. Ind Dev Training	0	4	0	(from HD69)
2B Beulah Bapt Ch	-54	-4180	-58	(to HD78, 77)
2H Harrison Elem	+16	+123	0	(from HD78)
5B Snowdown Womens Club	-3	0	0	(to HD69)
5E Fitzpatrick Elem	+331	2276	+177	(from HD69)
5M Bell Road YMCA	-1879	-1918	-661	(to HD75,74)
5N Peter Crump Sch	+57	+1624	+20	(from HD69)
Net	-2068	2492	-318	

**House District 77**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45954	13460	30808	1286
Target Pop	45521			
Deviation	0.951			
Percent by race		0.293	0.670	0.028

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45936	12321	31172	2043
Target Pop	45521			
Deviation	0.912			
Percent by race		0.268	0.679	0.044

**Precinct splits**

1A Cloverdale Comm Ctr	-3949	-1007	-137	(to HD76)
1B Vaughn Park Ch of Christ	+2578	+512	+62	(from HD74)
1E Aldersgate UMC	-1207	-5363	-318	(to HD76)
2B Beulah Bapt Ch	+56	+4514	+62	(from HD78, 76)
3A Capitol Hts Bapt Ch	-222	-236	-34	(to HD74)
4D Hamner Hall Fire Station	+8	4	+1	(from HD78)
4F Newtown Comm Ctr	+249	+1247	+34	(from HD78)
4G King Hill Comm Ctr	+1344	+1244	+1088	(from HD78)
4M McIntyre Comm Ctr	0	-551	-3	(to HD78)
4N Highland Avenue Bapt Ch	+4	0	+2	(from HD74)
Net	-1139	364	757	



**House District 78**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45957	11060	32167	2730
Target Pop	45521			
Deviation	0.958			
Percent by race		0.241	0.6999	0.059

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45697	11412	31546	2739
Target Pop	45521			
Deviation	0.387			
Percent by race		0.24973193	0.690	0.0599

**Precinct splits**

2B Beulah Bapt Ch	-2	-334	-4	(to HD76)
2D Montgomery Boys Club	+397	+422	+34	(from HD69)
2F Fire Station No. 14	-31	-687	-11	(to HD69)
2G Hayneville Road Comm Ctr	-27	-1713	-28	(to HD69)
2H Harrison Elem Sch	+21	+1180	+31	(from HD76)
2I Southlawn Elem	+82	+354	+2	(from HD69)
3F Goodwyn Comm Ctr	-259	-436	-25	(to HD74)
4D Hamner Hall Fire Station	+359	+1192	+28	(from HD77)
4F Newtown Comm Ctr	-249	-1247	-34	(to HD77)
4G King Hill Comm Ctr	+51	+97	+13	(from HD77)
4K Chisholm Comm Ctr	+10	0	0	(from HD74)
4M McIntyre Comm Ctr	0	+551	+3	(from HD77)
Net	352	-621	9	

**House District 82**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45858	15791	28496	1571
Target Pop	45521			
Deviation	0.740			
Percent by race		0.344	0.621	0.034

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	39454	13162	25203	1089
Target Pop	45521			
Deviation	-13.328			
Percent by race		0.334	0.639	0.028

**Precinct splits**

Auburn	-4688	-3865	-596	(to HD79)
Beuregard School	+2435	+649	+124	(from HD79, 83, 38)
Opelika B	-1663	-416	-61	(to HD79, 83, 38)
Dadeville Nat Guard Armory	+920	+170	+35	(from HD81)
Mary's Cross Road Voting H	+138	+118	+9	(from HD81)
Wall Street Comm Ctr	+229	+51	+7	(from HD81)
Net	-2629	-3293	-482	

\* Note - This district could not be brought into deviation without precinct splits

**House District 83**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45973	17211	26445	2317
Target Pop	45521			
Deviation	0.993			
Percent by race		0.374	0.575	0.050

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45813	20690	22792	2331
Target Pop	45521			
Deviation	0.641			
Percent by race		0.452	0.498	0.051

**Precinct splits**

Beuaregard School	-1554	-573	-72	(to HD38, 79, 82)
Lee County Snacks	+103	+3	+1	(from HD38)
Old Salem School	-188	-143	-7	(to HD38)
Opelika B	+9828	+1431	+479	(from HD38, 79, 82)
Smiths Station Sr. Ctr	-220	-138	-18	(to HD80, 38)
Austin Sumbry Park	-495	-271	-22	(to HD80)
Crawford Fire Dept	-1292	-482	-52	(to HD80)
CVCC	+16	+9	+2	(from HD80)
Ladonia Fire Dept	-7	-61	-3	(to HD80)
Nat Guard Armory	-1257	-2747	-147	(to HD80)
Seale Courthouse	-1455	-681	-147	(to HD84)
Net	3479	-3653	14	

**House District 84**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45969	19291	24066	2612
Target Pop	45521			
Deviation	0.984			
Percent by race		0.419	0.523	0.057

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45941	19291	24039	2611
Target Pop	45521			
Deviation	0.923			
Percent by race		0.4199	0.523	0.057

**Precinct splits**

Seale Courthouse	0	-27	-1 (to HD83)
Net	0	-27	-1

**House District 85**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45229	20884	22651	1694
Target Pop	45521			
Deviation	-0.641			
Percent by race		0.462	0.5008	0.037

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45365	27163	16255	1947
Target Pop	45521			
Deviation	-0.3423			
Percent by race		0.5987	0.3583	0.043

**Precinct splits**

Doug Tew Comm Ctr	-2181	-2040	-220	(to HD86)
Farm Ctr	+3358	+1188	+185	(from HD86)
Johnson Homes	-314	-4403	-121	(to HD86)
Kinsey	-378	-920	-54	(to HD86)
Library	+3278	+270	+118	from HD86)
Lincoln Comm Ctr	-223	-1037	-28	(to HD86)
Vaughn Blumberg Ctr	+297	+68	+33	(from HD93)
Westgate Rec Ctr	-14	-19	0	(to HD93)
Wiregrass Park	+2456	+497	+340	(from HD86)
Net	6279	-6396	253	

**House District 97**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45071	16535	27339	1197
Target Pop	45521			
Deviation	-0.989			
Percent by race		0.367	0.607	0.027

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45974	14894	29792	1288
Target Pop	45521			
Deviation	0.995			
Percent by race		0.324	0.648	0.028

**Precinct splits**

100 <u>Black</u> Men of Gr Mobile	-1	-474	-2	(to HD98)
Augusta Evans School	-1370	-153	-31	(to HD99)
Chickasaw Auditorium	+1105	+906	+102	(from HD96, 98)
Figures Rec Ctr	-30	-2821	-26	(to HD99)
Rock of Faith Baptist Ch	7	+1459	+12	(from HD103)
Saraland Civic Ctr	-161	-101	-44	(to HD98, 96)
St. Andrews Episcopal	+1271	+951	+78	(from HD103)
Vigor HS	+88	+2898	+54	(from HD98)
Murphy HS Library	-2550	-212	-52	(to HD99)
Net	-1641	2453	91	

**House District 98**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45069	16849	27049	1171
Target Pop	45521			
Deviation	-0.993			
Percent by race		0.374	0.600	0.026

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45952	15123	29836	993
Target Pop	45521			
Deviation	0.947			
Percent by race		0.329	0.649	0.022

**Precinct splits**

100 <u>Black</u> Men of Gr Mobile	+1	+474	+2	(from HD97)
Chickasaw Auditorium	-942	-827	-70	(to HD96, 97)
College Park Bapt Ch	+1259	+209	+54	(from HD102, 99)
First Bapt Ch of Axis	-1790	-496	-139	(to HD102, 96)
Havenwood Bapt Ch	+3938	80	+157	(from HD102)
Joseph Dotch Comm Ctr	+5	+235	+6	(from HD99)
Little Welcome Bapt	+1146	+2283	+118	(from HD99, 101)
Mt. Vernon Civic Ctr	-415	-859	-55	(to HD102)
Saraland Civic Ctr	-1246	-118	-66	(to HD97, 96)
Satsuma City Hall	-369	-403	-24	(to HD96)
Shelton Beach Rd. Bapt Ch	-2234	-593	-148	(to HD96)
Turnerville Comm	-1167	-96	-24	(to HD102)
Vigor HS	+88	+2898	+11	(from HD97)
	-1726	2787	-178	

**House District 99**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45069	14161	29572	1336
Target Pop	45521	0.314	0.656	0.0296
Deviation	-0.993			
Percent by race				

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45073	12652	31119	1302
Target Pop	45521			
Deviation	-0.984			
Percent by race		0.281	0.690	0.0289

**Precinct splits**

Augusta Evans School	-324	-426	-16	(to HD97)
Azalea City Ch of Christ	+694	+133	+47	(from HD102)
College Park Bapt	-1103	-209	-52	(to HD98, 102)
Figures Rec Ctr	+30	+2821	+26	(from HD97)
Friendship Missionary Bapt	+158	+7	+20	(from HD101)
Joseph Dotch Comm Ctr	+24	+2317	+32	(from HD98)
Little Welcome Bapt	-1059	-2264	-109	(to HD101, 98)
Moffett Road AOG	+387	+181	+32	(from HD102)
Murphy HS Library	-340	-326	-43	(to HD97)
Pleasant Valley Meth	+420	+475	+113	(from HD103)
Semmes First Bapt	-393	-437	-40	(to HD102)
St John UMC	+505	+202	+6	(from HD101)
University COC	-508	-927	-50	(to HD101)
Net	-1509	1547	-34	



**House District 103**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45075	13354	29326	2395
Target Pop	45521			
Deviation	-0.980			
Percent by race		0.296	0.651	0.053

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	45513	12854	31096	1563
Target Pop	45521			
Deviation	-0.0176			
Percent by race		0.282	0.683	0.034

**Precinct splits**

Bay of Holy Spirit Ch	-2029	-2705	-812	(to HD101)
Dodge School	+5018	+1370	+259	(from HD104)
First Independent Meth	-2	-119	0	(to HD104)
Hollingers Island Sch	-1482	-95	-107	(to HD105)
Kate Shepard School	-316	-304	-39	(to HD104)
Pleasant Valley Meth	-420	-475	-111	(to HD99)
Rock of Faith Bapt	+78	+5319	+60	(from HD97)
St Philip Neri Ch	-62	-186	-2	(to HD105)
St. Andrews Episcopal	-1271	-951	-78	(to HD97)
The Mug Café	-14	-84	-2	(to HD101)
Net	-500	1770	-832	

**Senate District 18**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	135258	46940	79939	8409
Target Pop	136564			
Deviation	-0.956			
Percent by race		0.347	0.591	0.062

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	135653	46800	80560	8323
Target Pop	136564			
Deviation	-0.667			
Percent by race		0.345	0.594	0.061

**Precinct splits**

Homewood Pub Lib	-399	-399	-165	(to SD16)
Mtn Brook City Hall	-844	-60	-23	(to SD15)
Bham Bot Gardens	-37	0	0	(to SD15)
Muscoda Comm Ctr	+593	+256	+53	(from SD19)
RobinsonElem	+547	+824	+49	(from SD20)
Net	-140	621	-86	

## Senate District 19

<u>Existing</u>		<u>White</u>	<u>Black</u>	<u>Other</u>
Total Pop	135218	42729	88314	4175
Target Pop	136564			
Deviation	-0.986			
Percent by race		0.316	0.653	0.031

<u>Revised</u>		<u>White</u>	<u>Black</u>	<u>Other</u>
Total Pop	135491	43502	87827	4162
Target Pop	136564			
Deviation	-0.786			
Percent by race		0.321	0.648	0.031

Precinct splits

Valley Creek Bapt Ch	-327	-130	-4 (to SD5)
Pleasant Hill UMC	+2966	+443	+75 (from SD18)
Johns Comm Ctr	-650	-130	-25 (to SD5)
Maurice West Comm	-1049	-493	-37 (to SD17)
Hillview Fire Station	-167	-177	-22 (to SD17, 20)
Net	773	-487	-13

**Senate District 20**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	135211	43734	85382	6095
Target Pop	136564			
Deviation	-0.991			
Percent by race		0.323	0.631	0.045

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	137138	46202	84886	6050
Target Pop	136564			
Deviation	0.420			
Percent by race		0.337	0.619	0.044

**Precinct splits**

Trussville First Baptist	-327	-347	-122	(to SD17)
Mtn View Baptist	+127	+1	+1	(from SD17)
Gardendale Civic Ctr	-914	-498	-88	(to SD17)
Pinson UMC	+2092	+254	+111	(from SD17)
Fultondale First Bapt	+1490	+94	+53	(from SD17)
Net	2468	-496	-45	

**Senate District 23**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	135338	45504	87754	2080
Target Pop	136564			
Deviation	-0.898			
Percent by race		0.336	0.648	0.015

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	136906	47739	87097	2070
Target Pop	136564			
Deviation	0.250			
Percent by race		0.349	0.636	0.015

**Precinct splits**

Jackson City Hall	+204	+44	+10	(from SD22)
Overstreet Grocery	+228	+50	+8	(from SD22)
Skipper Fire Stat	-123	-184	-3	(to SD22)
Old Eng Bldg	-236	-297	-6	(to SD22)
Thomasville Nat Guard Armory	-5	-76	0	(to SD22, 24)
Fulton City Hall (from SD22)	+30	+15	0	(from SD22)
Fulton City Hall (from SD24)	+70	+244	+2	(from SD24)
Belleville Bapt Ch	+51	0	0	(from SD22)
Castleberry Fire Dept	+665	+54	+17	(From SD22)
Paul Fire Dept	-58	-79	-2	(to SD22)
Herbert FD	+129	+7	0	(from SD22)
Bermuda Comm House	-79	-91	0	(to SD22)
Cornerstone Ch	+275	+68	+2	(from SD24)
Chrysler/Eliska/McGill	-5	-19	0	(to SD22)
Perdue Hill Mas Lodge	+141	+39	+4	(from SD22)
Purdue Hill	-36	-34	-7	(to SD22)
Bethell Bapt House	+38	0	0	(from SD22)
Days Inn Ollie	-18	-71	0	(to SD22)
Monroeville Armory	+935	+293	+19	(fro SD22)
Mexia Fire Station	0	-12	0	(to SD22)
Monroeville Housing Auth	+46	0	+1	(from SD22)
Shiloh/Grimes	+21	+1	0	(from SD22)
Malcolm Voting House	-6	-18	0	(to SD22)
Mcintosh Voting House	-92	-384	-47	(to SD22)

Cortelyou	+85	0	+1 (from SD22)
Carson/Preswick	-25	-207	-9 (to SD22)
Net	2235	-657	-10

**Senate District 24**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	137724	47152	87072	3500
Target Pop	136564			
Deviation	0.849			
Percent by race		0.342	0.632	0.025

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	135967	47370	84786	3811
Target Pop	136564			
Deviation	-0.437			
Percent by race		0.348	0.624	0.028

**Precinct splits**

Butler-Lavaca	+141	+7	+1 (from SD22)
Bogueloosa	+391	+29	+6 (from SD22)
Toxey-Gilbertown	-388	-344	-5 (to SD22)
Branch-Bladon Sprins	+43	+10	0 (from SD22)
Silas-Souwilpalsney	-818	-850	-4 (to SD22)
Lusk-Pleasant Valley	-14	-41	0 (to SD22)
Riderwood-Rock Springs	+43	0	0 (from SD22)
Bashi Methodist Ch	-1041	-1012	-41 (to SD22)
Havanna-A	+47	+6	0 (from SD14)
Valley B	+29	+7	0 (from SD14)
Valley C	+44	+13	0 (from SD14)
Carrollton 4 Service Ctr	+612	+250	+27 (from SD21)
Jaces Park	+617	+176	+121 (from SD21)
Holt Armory	+808	+282	+127 (from SD21)
Peterson Meth Ch	-331	-340	-4 (to SD21)
McFarland Mall	+2410	+809	+138 (from SD21)
Hillcrest HS	-645	-311	-18 (to SD21)
Fosters-Ralph Fire Dept	-1730	-977	-37 (to SD21)
Net	218	-2286	311

**Senate District 26**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	136451	26615	102520	7316
Target Pop	136564			
Deviation	-0.083			
Percent by race		0.195	0.751	0.054

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	136992	29768	100133	7091
Target Pop	136564			
Deviation	0.313406169			
Percent by race		0.217	0.731	0.052

**Precinct splits**

1A Cloverdale Comm Ctr	-248	-687	-76	(to SD25)
1B Vaughn Park Ch of Christ	+2787	+992	+116	(from SD25)
1C Mtgy Museum of Fine Arts	-941	-2651	-237	(to SD25)
1D Whitfield Mem UMC	+1441	+319	+21	(from SD25)
3F Goodwyn Comm Ctr	-344	-437	-112	(to SD25)
3G Alcazar Shrine	+709	+609	+93	(from SD25)
5M Bell Road YMCA	-251	-532	-30	(to SD25)
Net	3153	-2387	-225	



**Senate District 28**

<u>Existing</u>		<u>White</u>	<u>Black</u>	<u>Other</u>
Total Pop	137909	49580	82511	5818
Target Pop	136564			
Deviation	0.985			
Percent by race		0.3595	0.598	0.042

<u>Revised</u>		<u>White</u>	<u>Black</u>	<u>Other</u>
Total Pop	136262	55757	74681	5824
Target Pop	136564			
Deviation	-0.221			
Percent by race		0.4092	0.548	0.042

**Precinct splits**

Kinsey	-774	-969	+65	(to SD29)
JohnsonHomes	+165	+44	+6	(from SD29)
Farm Ctr	+3630	+1289	+214	(from SD29)
Doug Tew comm Ctr	-1385	-1626	-185	(to SD29)
Library	+3990	+556	+173	(from SD29)
Lincoln Comm Ctr	-202	-1027	-24	(to SD29)
Wiregrass Park	-1737	-3490	-219	(to SD29)
Vaughn Blumberg Ctr	+633	+232	+84	(from SD29)
Waverly	+198	+53	+6	(from SD27)
Loachapoka	+1148	+249	+120	(from SD27)
Auburn	-918	-2578	-148	(to SD27, 13)
Beuaregard School	-42	-25	-4	(to SD27)
Marvyn	+195	+48	+1	(from SD27)
Roy Martin Ctr	-1601	-1115	-184	(to SD27)
Ladonia Fire Dept	-7	-61	-3	(to SD27)
Seale Courthouse	+750	+152	+37	(from SD27)
Nat Guard Armory	+1852	+390	+55	(from SD27)
Austin Sumbry Park	+282	+48	+12	(from SD27)
Net	6177	-7830	6	

**Senate District 33**

<b><u>Existing</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	136214	34979	97587	3648
Target Pop	136564			
Deviation	-0.256			
Percent by race		0.257	0.716	0.027

<b><u>Revised</u></b>		<b><u>White</u></b>	<b><u>Black</u></b>	<b><u>Other</u></b>
Total Pop	136730	36212	96676	3588
Target Pop	136564			
Deviation	0.122			
Percent by race		0.265	0.708	0.028

**Precinct splits**

Chickasaw Auditorium	+1906	+455	+56	(from SD34)
Morningside Elem	+340	+92	+8	(from SD34)
Riverside Ch of the Nazarene	+425	+38	+3	(from SD35)
St. Andrews Episc. Ch.	-1438	-1496	-127	(to SD35)
Net	1233	-911	-60	