

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

ALABAMA LEGISLATIVE BLACK *
CAUCUS; BOBBY SINGLETON; *
ALABAMA ASSOCIATION OF BLACK *
COUNTY OFFICIALS; FRED *
ARMSTEAD, GEORGE BOWMAN, *
RHONDEL RHONE, ALBERT F. *
TURNER, JR., and JILES WILLIAMS, JR., *
individually and on behalf of others *
similarly situated, *

Plaintiffs, *

v. *

THE STATE OF ALABAMA; BETH *
CHAPMAN, in her official capacity as *
Alabama Secretary of State, *

Defendants. *

DEMETRIUS NEWTON et al., *

Plaintiffs, *

v. *

THE STATE OF ALABAMA et al., *

Defendants. *

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

Civil Action No.
2:12-cv-1081-WKW-MHT-WHP

**ALBC PLAINTIFFS' SECOND MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Plaintiffs Alabama Legislative Black Caucus et al., through undersigned counsel, pursuant to Rule 56, Fed.R.Civ.P., move for summary judgment with respect to their claims in Count III of the amended complaint, Doc. 60. There is no genuine dispute with respect to any material fact relating to Count III, and plaintiffs are entitled to declaratory and injunctive relief as a matter of law. As grounds for their motion, plaintiffs would show as follows:

1. The order entered Jan. 29, 2013, Doc. 63, lifted the stay on Rule 26 proceedings and scheduled trial for the week of August 12, 2013. The purpose of this motion is to obtain a determination as soon as possible of whether full discovery and the presentation of evidence at trial are necessary and, if so, what issues to be tried are in genuine dispute and should be subject to discovery.

2. This motion is also filed because time is of the essence. The next primary election for members of the Alabama House and Senate will be held on the first Tuesday in June 2014. Ala. Code § 17-13-3. Candidates may begin fund raising 12 months prior to the primary election, i.e., June 4, 2013. Ala. Code § 17-5-7(b)(2). The deadline for candidate qualification is sixty days before the primary election. Ala. Code § 17-13-5. The general election will be held on the first Tuesday after the first Monday in November 2014. Ala. Code § 17-14-3.

3. When this Court declares Acts 2012-602 and 603 unconstitutional, it

must afford a reasonable opportunity for the Legislature to meet constitutional and statutory requirements by adopting a substitute measure, rather than this Court undertaking to devise and order into effect its own plan. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978); *Reynolds v. Sims*, 377 U.S. 533, 586 (1964); *Sims v. Amos*, 336 F. Supp. 924, 930 (M.D. Ala.), aff'd, 409 U.S. 942 (1972). The regular session of the Alabama Legislature convened Tuesday, February 5, 2013, and will end no later than May 21, 2013. See <http://www.legislature.state.al.us/>.

4. Plaintiffs will be prejudiced if they are required to conduct discovery, retain expert witnesses, and present evidence on Counts II and III in plenary trial proceedings, when they are entitled at this time to summary judgment with respect to Count III of their amended complaint. Plaintiffs do not have access to the financial and investigatory resources that the State defendants possess. In *Shelby County v. Holder*, No. 12-96, which will be argued February 27 and likely will be decided no later than June 2013, the State of Alabama is asking the Supreme Court to strike down Sections 4 and 5 of the Voting Rights Act. If the State is successful, plaintiffs and the class of African Americans they seek to represent will no longer be protected against retrogression of their voting strength in any new House and Senate plans enacted by the Legislature, and it will be even more difficult for them to marshal the resources needed to prosecute litigation challenging those plans.

5. In support of their motion for summary judgment with respect to Count III, plaintiffs rely on the following documents in the record:

Doc. 7-1: Cooper declaration attached to plaintiffs' motion for summary judgment;

Docs. 30 through 30-48: defendants' consolidated memorandum in support of motion for judgment on the pleadings and in opposition to plaintiffs' motion for partial summary judgment and for preliminary injunction and the exhibits attached thereto;

Docs. 35-1 through 35-10: Exhibits A through J attached to plaintiffs' response to defendants' motion for judgment on the pleadings;

Docs. 60-1 through 60-41: Exhibits A through OO attached to the ALBC amended complaint;

Doc. 61: defendants' answer to the amended complaint;

and the following additional exhibits attached to this motion:

Exhibit PP: Excerpts from Mike Hubbard, *Storming the StateHouse: The Campaign That Liberated Alabama from 136 Years of Democrat Rule* (Montgomery: New South Books, 2012);

Exhibit QQ: Bryan Lyman, "Alabama Democrats hopeful for 2014 elections; Republicans see opportunities further gains in local races,"

Montgomery Advertiser, Jan. 27, 2013;

Exhibit RR: Brandon Moseley, “McClendon Discussing Redistricting With the Greater Birmingham Young Republicans,” alreporter.com, Sept. 5, 2012;

Exhibit SS: Supplemental Declaration of William S. Cooper.

These exhibits show that there is no genuine dispute with respect to the material facts set out in the following paragraphs.

Undisputed Material Facts

6. On May 31, 2012, the Governor signed into law Acts 2012-602 and 2012-603, which redraw the Alabama House and Senate districts with 2010 census data. See Exhibits A, B, C, and D, Docs. 60-1 through 60-4.

7. In the 2010 statewide elections Republicans won filibuster-proof majorities in both Houses of the Alabama Legislature. The Republican leadership of the Legislature controlled the Legislative Reapportionment Committee (LRC) Guidelines adopted in May 2011, see <http://www.legislature.state.al.us/reapportionment/Guidelines.html>, Doc. 30-4, and the redistricting plans set out in Acts 2012-602 and 2012-603.

8. The Reapportionment Committee Guidelines arbitrarily and impracticably required that “in every redistricting plan submitted to the

Reapportionment Committee, individual district populations should not exceed a 2% overall range of population deviation.” Guidelines at page 2 of 9.

9. Taken together, Acts 2012-602 and 2012-603 result in 49 of Alabama’s 67 counties having one or more members of their local legislative delegations than is necessary based on their populations. See Exhibit E, Doc. 60-5.

10. The House plan, Act 2012-602, splits 44 counties more than are necessary to satisfy the one-person, one-vote requirement, including 22 counties that are small enough to be completely contained within one House district and 7 counties (Baldwin, Jefferson, Lauderdale, Lee, Marshall, Mobile, and Montgomery) that could be divided into two or more complete House districts. See Exhibit E, Doc. 60-5.

11. The Senate plan, Act 2012-603, splits 31 counties more than are necessary to satisfy the one-person, one-vote requirement, including 26 counties that are small enough to be completely contained within one Senate district and one county (Mobile) that could be divided into two or more complete Senate districts. See Exhibit E, Doc. 60-5.

12. The Legislature could have reduced substantially the number of county splits had it employed the 10% overall population deviation ($\pm 5\%$) that constitutes substantial population equality under controlling Supreme Court precedents.

13. HB 16 and SB 5, which were sponsored by members of the Alabama Legislative Black Caucus, contained House and Senate redistricting plans that illustrate how the Alabama constitutional whole-county requirement could have been more nearly complied with while still maintaining 27 majority-black voting-age population (VAP) House districts and 8 majority-black VAP Senate districts. See Exhibits F, G, H, and I, Docs. 60-6 through 60-9.

14. Taken together, HB 16 and SB 5 result in only 27 of Alabama's 67 counties having one or more members of their local legislative delegations than are necessary based on their populations. See Exhibit J, Doc. 60-10.

15. The House plan, HB 16, splits only 22 counties more than are necessary to satisfy the one-person, one-vote requirement, including only 10 counties that are small enough to be in one House district. See Exhibit J, Doc. 60-10. Chilton and Dallas Counties each comprises one whole House district. Baldwin, Jefferson, Lauderdale, and Mobile Counties each contains multiple House districts without crossing their county boundaries.

16. The Senate plan, SB 5, splits only 9 counties more than are necessary to satisfy the one-person, one-vote requirement, including only 7 counties that are small enough to be in one Senate district. See Exhibit J, Doc. 60-10.

17. The House and Senate plans in HB 16 and SB 5 were drawn by an out-

of-state cartographer, who attempted to minimize the number of counties split while preserving 27 House districts and 8 Senate districts with majority-black voting-age populations. Only eleven census voter tabulation districts (which generally correspond with precincts) were split in the HB 16 plan, and those splits were necessary because parts of the VTDs either were too large or were noncontiguous. No VTDs were split in the SB 5 plan. If more VTDs were split, more county boundaries might be preserved, at least one additional majority-black House district could be drawn in Madison County, and some incumbent conflicts could be corrected. Doc. 7-1.

18. The House and Senate districts in Acts 2012-602 and 2012-603 have been designed to promote the agenda of the partisan majority to maximize the number of seats statewide that Republicans will hold in the Legislature. See Docs. 35-4 and 35-10 and Exhibits PP, QQ, and RR to this motion.

19. Responsiveness of the local legislative delegation to the voters of the particular county is crucial under Alabama's state constitutional system, which substantially restricts county home rule. The county's local legislative delegation effectively controls most important local government policies; for example, property and occupational taxes, changes in municipal boundaries, and salaries of elected county officials. This control operates primarily through written and

informal rules of the Legislature, the rule of “local courtesy” in particular, by which local laws affecting only one county are routinely uncontested on the floor of the House and Senate when they are approved by that county’s local legislative delegation.

20. In Alabama, the primary traditional principle for drawing legislative districts has always been the preservation of county boundaries. Since its admission to the United States in 1819, Alabama has maintained a policy of utilizing counties as the building blocks of equal representation in the Legislature. This policy is embedded in the Alabama Constitution of 1901, §§ 50, 198, 199, 200, which prohibit the division of county boundaries among House and Senate districts, and in the longstanding informal legislative custom of local courtesy, by which the members of each county’s local legislative delegation have virtual independence in deciding what laws will govern their own county and municipal governments.

21. This longstanding policy was acknowledged in the Legislative Reapportionment Committee’s guidelines (“The following redistricting policies contained in the Alabama Constitution shall be observed to the extent that they do not violate or conflict with requirements prescribed by the Constitution and laws of the United States: a. Each House and Senate district should be composed of as few

counties as practicable.”). Doc. 30-4 at 3. The guidelines also recognized compactness and contiguity as having constitutional priority. *Id.*

22. The $\pm 1\%$ restriction was adopted for an explicit partisan purpose, that is, ostensibly, as an attempt to avoid the type of partisan gerrymandering found unconstitutional in *Larios*. Doc. 30 at 7-9, 36-37.

23. Comparisons of Acts 2012-602 and 2012-603 with the plans in HB 16 and SB 5 illustrate the severe impact on county boundaries of the Legislature’s $\pm 1\%$ rule. See Exhibits K and L, Docs. 60-11 and 60-12. The House plan in Act 2012-602 splits Greene County in HD 61 to capture only 12 persons. Pieces of House districts that contain less than 5% of the ideal population split 11 counties unnecessarily, and there are 27 fragments that contain less than 10% of ideal population. Greene County, Marshall County, Coffee County, Morgan County and Coosa County each contains 2 (Coosa County contains a third fragment containing 10.224% of ideal population), and Dekalb County contains 3 House district fragments smaller than 10% (plus a fourth fragment that contains only 10.085% of ideal population). By comparison, no county in the HB 16 plan contains a fragment of a district containing less than 5% of the ideal population, and only Etowah County contains a piece smaller than 10% of ideal population.

24. The Senate plan in Act 2012-603 contains 14 district fragments smaller

than 5% of ideal population and 36 fragments smaller than 10% of ideal population. Choctaw, Hale, Conecuh, Clay, St. Clair, Talladega, Dekalb, Pickens, Monroe, and Winston Counties all have 2 fragments less than 10% of ideal population. Marengo County has one 4.59% and one 10.81% fragment. Clarke County has 3 fragments less than 10% of ideal population. By comparison, in SB 5 only Mobile County contains a piece of a district containing less than 5% of the ideal population (a cartographer error, see ¶ 79.b. *infra*, and Exhibit SS), and only 3 counties contain a piece smaller than 10% of ideal population.

25. The Legislative Reapportionment Committee (LRC) held hearings all over Alabama purportedly to receive public input to the redistricting process. But the hearings all were held before the LRC had proposed any House or Senate plans using 2010 census data. Denied the ability to comment on particular district lines, the citizens and local officials who spoke at these hearings expressed a single, nearly unanimous concern, namely, that the integrity of their county boundaries be respected to the extent practicable. But this paramount constituent concern was almost completely ignored by the LRC and the Legislature. See Exhibit RR at 2.

26. The first public hearing by the LRC was held in Fort Payne, Dekalb County, on October 3, 2011. Doc. 30-9. The speakers emphasized the importance of county integrity, but their comments were ignored by the Legislature:

a. HD 22 and HD 24 needed to lose population, while HD 23 needed to gain population. Exhibits M and Q, Docs. 60-13 and 60-17; Doc. 30-9 at 2. Most speakers said that 4 House districts were too many, since Dekalb County is small enough for only 2 districts. Doc. 30-9 at 4, 6, 7, and 8. But, instead of reducing the number of districts, Act 2012-602 increases the number of House districts in Dekalb County from 4 to 6. See Exhibit N, Doc. 60-14. Only HD 24 lies entirely within Dekalb County. The other five House districts contain only small fragments of Dekalb County: HD 23 (3.48%), HD 27 (7.70%), HD 39 (10.085%), HD 26 (14.791%), and HD 29 (19.174%), Exhibit K, Doc. 60-11, and their incumbents reside in and represent 7 outside counties: Jackson, Marshall, Blount, Cherokee, Calhoun, Cleburne, and Etowah Counties. Exhibit A, Doc. 60-1. There is no compelling federal or state reason or rational basis for dividing Dekalb County among so many House districts or for increasing the size of its local legislative delegation and the number of other counties whose residents elect members of its local delegation. Neither the arbitrary $\pm 1\%$ deviation rule nor partisan nor incumbent interests can justify diluting the votes of Dekalb County residents.

b. SD 8, which in the 2002 Senate plan contained all of Dekalb and Jackson Counties and a fragment in rural eastern Madison County, had to give up

population. Exhibits O and Q, Docs. 60-15 and 60-17; Doc. 30-9 at 1. Speakers at the Dekalb County hearing, including the Mayor of Fort Payne, asked that all of Jackson and Dekalb Counties be kept in SD 8 and that Madison County be removed. *Id.* at 4, 10. Instead, Act 2012-603 splits Dekalb County between 3 Senate districts and extends SD 8 even farther west into the metropolitan Huntsville area of Madison County. Exhibit P, Doc. 60-16. There is no compelling federal or state reason or rational basis for dividing Dekalb County among so many Senate districts and placing 2 non-resident Senators in its local delegation, one of whom, Clay Scofield, resides in Blount County, which does not adjoin Dekalb County. Neither the arbitrary $\pm 1\%$ deviation rule nor partisan nor incumbent interests can justify diluting the votes of Dekalb County residents.

27. A public hearing by the LRC was held in Guntersville, Marshall County, on October 3, 2011. Doc. 30-10. The speakers all asked that Marshall County be kept whole to the extent practicable and that only one other county be included in the local legislative delegation where necessary to balance population. *Id.* at 6-9. They expressed preferences for being joined with Blount County and taken out of Madison County. *Id.*

a. In the 2002 plan, Marshall County had only 2 House districts. HD 27 lay entirely inside Marshall County, and HD 26 contained only part of Dekalb

County. Exhibit M, Doc. 60-13. Both HD 26 and HD 27 were overpopulated. Exhibit Q, Doc. 60-17. But, instead of reducing the number of counties in these two districts, Act 2012-602 dramatically increases them. Exhibit N, Doc. 60-14. HD 27 could have been left undisturbed totally within Marshall County. But Act 2012-602 extended HD 27 into Blount County (5.51%) and Dekalb County (7.70%). HD 26 retained a part of Dekalb County (14.79%), but 3 additional House districts were added to the Marshall County local legislative delegation: HD 9 (2.80%) (Morgan and Cullman Counties), HD 11 (8.84%) (Morgan, Cullman, and Blount Counties), and HD 34 (19.59%) (Blount County). So the number of House members in the Marshall County delegation increases from 2 to 5, and the number of counties whose residents elect members of the Marshall County House delegation increases from 3 to 6. There is no compelling federal or state reason or rational basis for dividing Marshall County among so many House districts or for increasing the size of its local legislative delegation and the number of other counties whose residents elect members of its local delegation. Neither the arbitrary $\pm 1\%$ deviation rule nor partisan nor incumbent interests can justify diluting the votes of Marshall County residents.

b. SD 9 contained all of Marshall County and parts of Madison and Blount Counties in the 2002 plan and was only 5.85% overpopulated. Exhibits O

and Q, Docs. 60-15 and 60-17. The incumbent, Republican Clay Scofield, resides just over the Marshall County border in Blount County, and the speakers at the hearing asked that SD 9 be taken out of Madison County and kept only in Marshall and Blount Counties. Instead, Act 2012-603 keeps fragments of Madison County (14.13%) and Blount County (9.31%) and adds a fragment in Dekalb County (9.44%). Exhibits P and L, Docs. 60-16 and 60-12. There is no compelling federal or state reason or rational basis for including residents of 3 other counties in the constituency of the one Senator in the Marshall County local delegation. Neither the arbitrary $\pm 1\%$ deviation rule nor partisan nor incumbent interests can justify diluting the votes of Marshall County residents.

28. Public hearings by the LRC were held in Fayette, Fayette County, and Florence, Lauderdale County, on October 4, 2011. Docs. 30-12 and 30-13. The speakers all asked that their counties be kept whole or, at least, that the number of legislators in their local delegations be minimized.

a. HD 16, which contained all of Lamar and Fayette Counties and a part of Tuscaloosa County, was underpopulated by 12.38%. Exhibits Q and R, Docs. 60-17 and 60-18. Winston County was split between 3 House districts, and Walker County was split between 2 districts. Lauderdale County was whole within 2 House districts, and its county boundaries were not split. All the other counties

in northwest Alabama, Colbert, Franklin, Lawrence, and Marion, were not split between House districts. Exhibit R, Doc. 60-18. All of these northwest Alabama House districts, HD 2, 3, 7, 13, 14, 16, 17, and 18, were underpopulated, except for HD 1, the Florence metropolitan area, which was only 3.79% overpopulated. HD 2 was only underpopulated by 0.012%, so there was no need to redraw the House districts that kept Lauderdale County whole. Exhibit Q, Doc. 60-17. But, instead of compressing the House districts south of Lauderdale County and reducing the number of county splits, Act 2012-602 splits Lauderdale County into 4 districts, leaving only part of HD 2 (85.857%) and adding fragments of HD 3 (3.61%) and HD 18 (13.486%). Exhibits K and S, Docs. 60-11 and 60-19. It keeps Winston County split into 3 districts and Walker County split into 2 districts, extending HD 13 beyond Walker County into Blount County (11.241%), then it splits Colbert, Lawrence, and Lamar Counties. HD 16 not only splits Lamar County, it extends all the way through Fayette and Tuscaloosa (18.381%) Counties into Jefferson County (27.598%), a gerrymander that was designed purposefully to punish Rep. Dan Boman, the Sulligent Representative who had switched from the Republican Party to the Democratic Party. Exhibits K and S, Docs. 60-11 and 60-19; Doc. 35-10. In other words, by adding multiple new county splits and by extending existing House districts into new counties, Act 2012-602 manages to dilute the

voting strength of residents in every northwest Alabama county. There is no compelling federal or state reason or rational basis for dividing Lauderdale, Colbert, Lawrence, Franklin, Winston, Lamar, and Walker Counties among so many House districts or for increasing the size of their local legislative delegations and the number of other counties whose residents elect members of their delegations. Neither the arbitrary $\pm 1\%$ deviation rule nor partisan nor incumbent interests can justify diluting the votes of these many county residents.

b. SD 1, which contained all of Lauderdale County and the eastern half of Colbert County, was underpopulated by 1.10%. SD 6, which contained the rest of Colbert County, parts of Lawrence and Winston Counties, and all of Franklin, Marion, Lamar and Fayette Counties, was underpopulated by 14.29%. Exhibits Q and T, Docs. 60-17 and 60-20. These two Senate districts are represented by Democratic Senators, Tammy Irons of Florence in SD1 and Roger Bedford of Russellville in SD 6, both of whom testified during the hearings. Senator Irons requested that if any slight addition were deemed necessary in SD 1 that it be taken from Colbert County. Doc. 30-13 at 4-5. Senator Bedford requested that SD 6 be extended farther into Lawrence County. Doc. 30-12 at 4. Instead, Act 2012-603 splits Lauderdale County and extends SD 1 all the way through Limestone County (31.97%) into Madison County (16.14%). Exhibits L

and U, Docs. 60-12 and 60-21. The partisan purpose of this gerrymander was to remove predominately black Madison County precincts to SD 1, avoiding a potential crossover district, like the 40% black SD 7 in SB 5. Exhibits H and I, Docs. 60-8 and 60-9. SD 6 was also radically reworked. Lamar and Fayette Counties were completely removed from SD 6, as was the eastern half of Marion County, and non-contiguous fragments of Lauderdale (19.84%) were added to SD 6. Exhibits L and U, Docs. 60-12 and 60-21. There is no compelling federal or state reason or rational basis for these radical, county-splitting changes to SD 1 and SD 6. Neither the arbitrary $\pm 1\%$ deviation rule nor partisan nor incumbent interests can justify diluting the votes of Lauderdale, Limestone, Madison, Lawrence, and Marion County residents.

29. A public hearing by the LRC was held in Decatur, Morgan County, on October 4, 2011. Doc. 30-14. Only two persons spoke, and they both asked that the integrity of Limestone County be respected. *Id.* at 4.

a. In the 2002 House plan, HD 4, HD 10, and HD 12 (+0.61%) were overpopulated, and HD 7, HD 8, HD 9 (-0.32%), and HD 11 (-3.11%) were underpopulated. Exhibits Q and R, Docs. 60-17 and 60-18. Limestone and Cullman Counties each was split among 3 House districts, and Morgan County was split among 4 House districts. Exhibit R, Doc. 60-18. Instead of reducing these

county splits, Act 2012-602 increases the number of districts in Limestone County from 3 to 5 and in Morgan County from 4 to 5. Exhibit S, Doc. 60-19. Cullman County remains split among 3 House districts. *Id.* There is no compelling federal or state reason or rational basis for dividing Limestone, Morgan, and Cullman Counties among so many House districts or for increasing the size of their local legislative delegations and the number of other counties whose residents elect members of their delegations. Neither the arbitrary $\pm 1\%$ deviation rule nor partisan nor incumbent interests can justify diluting the votes of these many county residents.

b. In the 2002 Senate plan, SD 2, SD 3, and SD 7 were overpopulated, and SD 4 was underpopulated. Exhibits Q and T, Docs. 60-17 and 60-20. Limestone County was split between 2 Senate districts, while Morgan and Cullman Counties were contained whole in Senate districts they each shared with 2 other counties. Exhibit T, Doc. 60-20. Act 2012-603 increases the number of Senate districts in Limestone County from 2 to 3 (only 7.20% of SD 3 is in Limestone County), Exhibits L and U, Docs. 60-12 and 60-21, which, combined with its House districts, increases the overall size of the Limestone County local legislative delegation from 5 to 8, when its population only warrants 3. Exhibit E, Doc. 60-5. Cullman County remains whole within one Senate district, but the

boundaries of SD 4 have been extended into Lawrence, Winston, and Marion (9.04%) Counties, Exhibit L, Doc. 60-12, so that Cullman County's local legislative delegation now includes one Senator who is elected by citizens of 3 other counties. There is no compelling federal or state reason or rational basis for splitting Limestone County among so many Senate districts or for increasing the size of its local legislative delegation and that of Cullman County. Neither the arbitrary $\pm 1\%$ deviation rule nor partisan nor incumbent interests can justify diluting the votes of Limestone, Morgan, Cullman and Marion County residents.

30. A public hearing by the LRC was held in Clanton, Chilton County, on October 6, 2011. Doc. 30-15. All the speakers, including the incumbent Senator, former House member, Mayor of Clanton, and Chilton County Probate Judge, pleaded with the LRC to keep Chilton County undivided, as it was in the 2002 House and Senate plans. Doc. 30-15 at 2-5; Exhibits V and W, Docs. 60-22 and 60-23.

a. HD 42, which in the 2002 plan contained all of Chilton County and a small part of Shelby County, Exhibit V, Doc. 60-22, was overpopulated by 6.19%. Exhibit Q, Doc. 60-17. By removing the Shelby County fragment, Chilton County would have made a complete HD 42 underpopulated by 4.13%, as it is in HB 16. Exhibits F and G, Docs. 60-6 and 60-7. Instead, Act 2012-602 divides

Chilton County among 3 House districts, HD 49 (18.040%), which extends into Bibb and Shelby Counties, HD 81, which extends through Coosa County (9.40%) into Tallapoosa County, and HD 42, which extends into Autauga County. Exhibits A, K, Q, and X, Docs. 60-1, 60-11, 60-17, and 60-24. So the number of House members in the Chilton County local legislative delegation has increased from 1 to 3, and the number of counties outside Chilton County who elect members of the Chilton County legislative delegation has been increased from 2 to 5. There is no compelling federal or state reason or rational basis for splitting Chilton County among so many House districts or for increasing the size of its local legislative delegation and increasing the number of other counties whose residents elect members of the Chilton County delegation. Neither the arbitrary $\pm 1\%$ deviation rule nor partisan nor incumbent interests can justify diluting the votes of Chilton County residents.

b. SD 14, which in the 2002 plan contained all of Chilton County and parts of Bibb, Shelby, and Jefferson Counties, was overpopulated by 23.51%. Exhibits W and Q, Docs. 60-23 and 60-17. But, instead of compacting SD 14 into more whole counties, e.g., Exhibit H, Doc. 60-8, Act 2012-603 splits Chilton County between 2 Senate districts, SD 14, which not only extends into Shelby County and Jefferson County (8.14%) and includes all of Bibb County, but now

includes a fragment of Hale County (2.27%), and SD 30 (8.08%), which includes all of Autauga and Coosa Counties and a part of Elmore County. Exhibits L and C, Docs. 60-12 and 60-3. So the number of Senate members in the Chilton County local legislative delegation has increased from 1 to 2, and the number of counties outside Chilton County who elect Senate members of the Chilton County legislative delegation has increased from 3 to 6. The combined Chilton County local legislative delegation has increased from 2 to 5 legislators representing 7 other counties. There is no compelling federal or state reason or rational basis for splitting Chilton County among 2 Senate districts or for increasing the size of its local legislative delegation and the number of other counties whose residents elect members of the Chilton County delegation. Neither the arbitrary $\pm 1\%$ deviation rule nor partisan nor incumbent interests can justify diluting the votes of Chilton County residents.

31. Public hearings by the LRC were held in Pelham, Shelby County, and Birmingham, Jefferson County, on October 6, 2011. Docs. 30-16 and 30-17. Most of the speakers were incumbent legislators, and they all emphasized the importance of preserving county and municipal boundaries. Doc. 30-16 at 5; Doc. 30-17 at 4-6, 9. Some legislators and nearly all the citizen speakers requested the opportunity to review the LRC's proposed plans once they had been drawn. Doc. 30-16 at 4-5;

Doc. 30-17 at 6, 9-14. Black legislators objected to packing the majority-black districts. Doc. 30-17 at 6, 9.

a. In the 2002 plan Jefferson County had 18 House districts, 9 majority-white and 9 majority-black. All 9 of the majority-black House districts were contained entirely within Jefferson County, but 4 of the 9 majority-white districts, HDs 34, 43, 45, and 48, included parts of 4 other counties. Exhibits V and Z, Docs. 60-22 and 60-26. The House districts in Shelby County, HDs 41, 42, 43, 43, 48, 49, and 50, all were overpopulated. Exhibits Q, V, Z, Docs. 60-17, 60-22, 60-26. In Jefferson County, all but one, HD 45 (-5.78%), of the majority-white districts were overpopulated, HDs 15, 34, 43, 44, 46, 47, 48, and 51. All the majority-black districts, HDs 52-60, were underpopulated. Exhibits Q, V, Z, Docs. 60-17, 60-22, 60-26. Four of the majority-white House districts crossed the Jefferson County boundary to include parts of three other counties, Blount County (HD 34), Shelby County (HD 43 and HD 48), and St. Clair County (HD 45).

b. The Act 2012-602 plan retains 18 House districts in Jefferson County, but only 8 are majority-black, and they are all located entirely within Jefferson County. Exhibits AA and B, Docs. 60-27 and 60-2. Now there are 10 majority-white House districts, and 6 of them cross the Jefferson County boundary to include parts of 6 other counties. A total of 155,279 people residing outside

Jefferson County are represented by members of Jefferson County's local House delegation. Exhibit DD, Doc. 60-30. HD 43 contains only 224 residents of Jefferson County (1.14%), and only 8 of them are black. Exhibit K. The rest of HD 43 lies entirely in Shelby County. Exhibit AA, Doc. 60-27. HD 14 contains 5,338 Jefferson County residents (11.73%), of whom only 18 are black. Exhibit K, Doc. 60-11. The rest of HD 14 includes parts of both Walker County and Winston County. Exhibit A, Doc. 60-1. Only 27.60% of HD 16's population resides in Jefferson County, 10.91% of whom are black. Exhibit K, Doc. 60-11. The rest of HD 16 contains parts of Tuscaloosa, Fayette, and Lamar Counties, including the residence of incumbent Dan Boman of Sulligent, the former Republican who switched to the Democratic Party. Exhibit A, Doc. 60-1; Doc. 35-10. Almost half (47.26%) of HD 45's population is located in Jefferson County, of whom 23.33% are black, and the rest is in Shelby County. Exhibits K and AA, Docs. 60-11 and 60-27. The vast majority (80.51%) of HD 48's residents are in Jefferson County, only 3.35% of whom are black; the rest reside in Shelby County. Finally, 88.68% of HD 15's population resides in Jefferson County, of whom 14.17% are black; the rest reside in Shelby County. Exhibits K and AA, Docs. 60-11 and 60-27.

c. In the 2002 plan Jefferson County had 8 Senate districts, 5 majority-white and 3 majority-black. All 3 of the majority-black Senate districts,

SDs 18, 19, and 20, were contained entirely within Jefferson County. But all of the 5 majority-white districts, SDs 5, 14, 15, 16, and 17, included parts of 8 other counties, Winston, Walker, Tuscaloosa, Blount, St. Clair, Shelby, Bibb, and Chilton. Exhibits BB, T, and W, Docs. 60-28, 60-20, 60-23. All 3 majority-black Senate districts, SDs 18, 19, and 20, were underpopulated. All but one, SD 5 (-1.16%), of the 5 majority-white districts were overpopulated: SDs 14-17.

d. The Act 2012-603 plan retains the 8 Jefferson County Senate districts. All three majority-black districts are contained entirely within Jefferson County. Exhibit CC, Doc. 60-29. But only parts of the populations of each of the 5 majority-white districts reside in Jefferson County: SD 5 (13.64%), SD 14 (8.14%), SD 15 (37.76%), SD 16 (69.42%), and SD 17 (56.13%). Exhibit L, Doc. 60-12. The number of other counties that provide constituencies for Senators in the Jefferson County local legislative delegation has expanded from 8 to 11: Fayette, Walker, Winston (8.80%), Tuscaloosa, Hale, Bibb, Shelby, Chilton, Talladega (4.24%), St. Clair (5.97%), and Blount. Exhibits C, L, CC, U, and Y, Docs. 60-3, 60-12, 60-29, 60-21, 60-25. A total of 428,101 people residing outside Jefferson County are represented by members of Jefferson County's local Senate delegation. Exhibit EE, Doc. 60-31.

e. Had the Legislature complied with its own redistricting guidelines,

14 House districts could have been drawn entirely within Jefferson County, with no district extending beyond the Jefferson County boundaries, as demonstrated by the HB 16 plan. Exhibits F and G, Docs. 60-6 and 60-7. All 9 of the current majority-black House districts could have been maintained. Similarly, as demonstrated by the SB 5 plan, Exhibits H and I, Docs. 60-8 and 60-9, 5 or 6 Senate districts could have been drawn, 4 of which could have been contained entirely within Jefferson County, while maintaining the current 3 majority-black Senate districts. The single Senate district crossing Jefferson County's boundaries would have included residents of only one other county.

f. Instead, Acts 2012-602 and 2012-603 place 6 more legislators in the Jefferson County local legislative delegation than are required by federal constitutional and statutory law. A total of 11 House and Senate districts cross Jefferson County's boundaries to include residents of 11 other counties.

g. There is no compelling federal or state reason or rational basis for splitting Jefferson County among 11 House and Senate districts or for increasing the size of its local legislative delegation and the number of other counties whose residents elect members of the Jefferson County delegation. Neither the arbitrary \pm 1% deviation rule nor partisan nor incumbent interests can justify diluting the votes of Jefferson County residents.

32. In the economically depressed Black Belt counties and other rural counties of South Alabama, public hearings were held by the LRC on October 11-13, 2011, in Troy, Pike County, Doc. 30-18, Greenville, Butler County, Doc. 30-19, Dothan, Houston County, Doc. 30-20, Brewton, Escambia County, Doc. 30-21, Thomasville, Clarke County, Doc. 30-23, Demopolis, Marengo County, Doc. 30-24, and Tuscaloosa, Tuscaloosa County, Doc. 30-25, and on October 18, 2011, in Selma, Dallas County, Doc. 30-28. Most legislators, local officials, and citizens who spoke at these hearings emphasized the importance of keeping their counties whole. Doc. 30-18 at 6-11; Doc. 30-19 at 4; Doc. 30-20 at 5-9; Doc. 30-21 at 5-8; Doc. 30-23 at 7-12, 15-19; Doc. 30-24 at 7, 12; Doc. 30-25 at 8-10, 13, 15.

a. In the 2002 House plan, 3 of the Black Belt counties (Marengo, Dallas, and Bullock) had been split more than necessary based on population, as had 8 other South Alabama counties, Choctaw, Tuscaloosa, Clarke, Monroe, Conecuh, Escambia, Dale, Russell, and Bullock. Exhibits E and V, Docs. 60-5 and 60-22. Tuscaloosa County, which is large enough for 5 House districts, was split into 7 House districts. Dale County, which is large enough for 2 House districts, was split into 3 House districts. And Conecuh, Escambia, and Russell Counties, which are small enough for 1 House district, each was split into 3 House districts. *Id.* Thus in South Alabama the 2002 House plan already split a total of 11

counties.

b. The Act 2012-602 House plan makes the situation worse, splitting 13 counties in South Alabama: Pickens, Sumter, Greene, Perry, Marengo (3x), Tuscaloosa (6x), Washington, Clarke, Monroe, Escambia, Russell (3x), Coffee (3x), and Houston (4x). The first 5 of these counties are in the Black Belt. Exhibits E and X, Docs. 60-5 and 60-24. By comparison, the HB 16 House plan, sponsored by members of the ALBC, showed that it would have been necessary to split no more than 5 South Alabama counties, none of them in the Black Belt: Clarke, Monroe, Conecuh, Pike, and Houston (which requires only 3 House districts, but is split among 4 districts). Exhibits E and F, Docs. 60-5 and 60-6.

c. In the 2002 Senate plan, 3 of the Black Belt counties (Marengo, Perry, and Hale) had been split more than necessary based on population, as had 7 other counties (Tuscaloosa, Choctaw, Clarke, Monroe, Conecuh, Russell, Dale, and Houston). Exhibits E and W, Docs. 60-5 and 23. Thus in South Alabama the 2002 Senate plan already split a total of 10 counties.

d. The Act 2012-603 Senate plan splits 11 counties in South Alabama: the Black Belt counties of Pickens, Marengo, and Hale, plus Tuscaloosa, Choctaw, Clarke (3x), Monroe, Conecuh (3x), Dale, Russell, and Houston. Exhibits E and Y, Docs. 60-5 and 60-25. By comparison, the SB 5 Senate plan,

sponsored by members of the ALBC, showed that it would have been necessary to split no more than one county (Dale), none in the Black Belt. Exhibits E and H, Docs. 60-5 and 60-8.

e. There is no compelling federal or state reason or rational basis for splitting so many Black Belt and other South Alabama counties among House and Senate districts or for increasing the size of their local legislative delegations and the number of other counties whose residents elect members of their delegations. Neither the arbitrary $\pm 1\%$ deviation rule nor partisan nor incumbent interests can justify diluting the votes of Black Belt and other South Alabama county residents.

33. A public hearing was held by the LRC on October 12, 2011, in Mobile, Mobile County. Doc. 30-22. The Mobile County Probate Judge urged the LRC to avoid crisscrossing the existing county commission and county school board district lines. *Id.* at 5-6.

a. The 2002 House plan split Mobile and Baldwin Counties in HD 96 and split Baldwin County in HD 66, which extended into Escambia County, and again in HD 64, which extended into Escambia, Conecuh, and Monroe Counties. Exhibit FF, Doc. 60-32. A speaker at the public hearing representing both the City of Chickasaw in Mobile County and the State Republican Executive Committee requested that part of Chickasaw, which was split between majority-black HD 98

and majority-white HD 96, be left in HD 96 for the explicitly partisan purpose of matching Republican voters in Mobile and Baldwin Counties. Doc. 30-22 at 6-7. Act 2012-602 complies with this partisan request: a majority-white part of Chickasaw is in HD 96, and the majority-black areas of Chickasaw are split between majority-black districts HD 97 and HD 98. Exhibit GG, Doc. 60-33. HD 96 is the only House district that splits Mobile County. But Baldwin County is split at total of 4 times, through HD 96, HD 64, which extends into Monroe County, HD 66, which extends into Escambia County, and HD 68, which extends all the way into Washington, Clarke, Marengo, Monroe, and Conecuh Counties. Exhibits A and GG, Docs. 60-1 and 60-33. None of these county splits was necessary. The HB 16 House plan showed that both Mobile County and Baldwin County could have been kept whole, not splitting either of them. Exhibit F, Doc. 60-6.

b. In the 2002 Senate plan, SD 22 split both Mobile and Baldwin Counties and extended into Washington, Choctaw, Clarke, Monroe, Conecuh, and Escambia Counties. Exhibits W and HH, Docs. 60-23 and 60-34. Washington and Escambia Counties were kept whole. In the Act 2012-603 plan, SD 22 keeps only Escambia County whole and keeps parts of all 7 of the other counties. Exhibits Y and II, Docs. 60-25 and 60-35. SD 22 splits Mobile County only by including

small precincts in Citronelle and Mount Vernon. Exhibit II, Doc. 60-35. The SB 5 Senate plan demonstrated how SD 22 could have been drawn to split only Baldwin County, while including Washington, Escambia, and Covington Counties whole. Exhibit H, Doc. 60-8. There was no need to split Mobile County at all. The Mount Vernon precinct that SB 5 included in SD 22 could be removed without creating any population deviations greater than 5%. Exhibit SS.

c. There is no compelling federal or state reason or rational basis for splitting so many counties in Southwest Alabama among House and Senate districts or for increasing the size of their local legislative delegations and the number of other counties whose residents elect members of their delegations. Neither the arbitrary $\pm 1\%$ deviation rule nor partisan nor incumbent interests can justify diluting the votes of Southwest Alabama county residents.

34. Public hearings were held by the LRC on October 17, 2011, in Anniston, Calhoun County, and Auburn, Lee County. Docs. 30-26 and 30-27. In Anniston, Rep. Jim McClendon, a Co-Chair of the LRC, entered a statement in the record for himself as a representative of St. Clair County and for another citizen of St. Clair County. Doc. 30-26 at 7-8. Rep. McClendon said St. Clair County should have only 2 House members and 1 Senator in its local legislative delegation, but under the 2002 House and Senate plans St. Clair County has 6

legislators in its local delegation, 5 of whom reside in and represent other counties. Id. This was not right, he said, because, due to the system established by the Alabama Constitution, it allows one out-of-county legislator to veto local bills for St. Clair County and creates confusion among voters. Id. Rep. McClendon's concern about unnecessarily splitting counties was echoed by speakers from St. Clair and Cleburne Counties. Id. at 12, 18. At the Auburn hearing, Rep. Pebblin Warren and two other Bullock County residents asked that Macon and Bullock Counties be restored whole to the same House district. Doc. 30-27 at 7, 13, 15. The Lee County Probate Judge and several other citizens complained that Lee County, whose population justifies only 3 House districts and 1 Senate district, Exhibit E, Doc. 60-5, was divided among 5 House districts and 3 Senate districts. Doc. 30-27 at 8-10, 12, 14.

a. In the 2002 House plan, St. Clair County, whose population requires only 2 House districts, Exhibit E, Doc. 60-5, is split into 3 House districts, HD 30, HD 50, and HD 36. Exhibit LL, Doc. 60-38. Cleburne County is contained whole in HD 39. Id. Lee County, whose population requires only 3 House districts, is divided among 5 House districts, HD 38, HD 79, HD 80, HD 82, and HD 83. Exhibits V and LL, Docs. 60-22 and 60-38. But the Act 2012-602 House plan still splits St. Clair County among the same 3 House districts, and it

splits Cleburne County between HD 37 and HD 39. Exhibit MM, Doc. 60-39. As demonstrated by HB 16, even if St. Clair County remains divided among 3 House districts, there is no need to split Cleburne County. Exhibit F, Doc. 60-6. Act 2012-602 keeps Macon and Bullock whole, but it does not place them in the same House district. Exhibit X, Doc. 60-24. HB 16 would have joined Macon and Bullock Counties whole in the same House district. Exhibit F, Doc. 60-6. Act 2012-602 retains the same 5 House districts dividing Lee County. Exhibit X, Doc. 60-24. HB 16 would have divided Lee County into 4 House districts, and redrawing the oddly shaped districts in Coosa and Tallapoosa Counties could reduce the number of House districts in Lee County to the minimum 3. Exhibit F, Doc. 60-6.

b. In the 2002 Senate plan, St. Clair County is divided between 2 Senate Districts, SD 12 and SD 17. Exhibit NN, Doc. 60-40. Act 2012-603 increases to 3 the number of Senate districts in St. Clair County: SD 10, SD 11, and SD 17. Exhibit OO, Doc. 60-41. St. Clair County could have been kept whole and not split at all between Senate districts, as demonstrated by SB 5. Exhibit H, Doc. 60-8. Lee County could have been drawn as a single, self-contained Senate district, as demonstrated by SB 5. *Id.*

c. One of the worst partisan gerrymanders targeted SD 11, whose

incumbent, Jerry Fielding, was elected as a Democrat. (Sen. Fielding switched to the Republican Party after the passage of Act 2012-603.) Under the 2002 Senate plan, SD 11 contained all of Talladega and Coosa Counties and the eastern third of Elmore County. Exhibit NN, Doc. 60-40. Act 2012-603 radically changes SD 11 into a horseshoe shape, leaving it with no whole counties. Exhibit OO, Doc. 60-41. Talladega County now is divided among 4 Senate districts, SD 11, SD 12, SD 15, and SD 17, which include in Talladega County's local legislative delegation representatives of 6 other counties, Jefferson, Blount, St. Clair, Calhoun, Clay, and Shelby. *Id.* Coosa County's local delegation now includes representatives of 3 other counties, Elmore, Autauga, and Chilton. *Id.*

d. There is no compelling federal or state reason or rational basis for splitting St. Clair, Lee, Talladega, and Coosa Counties among so many House and Senate districts or for increasing the size of their local legislative delegations and the number of other counties whose residents elect members of their delegations. Neither the arbitrary $\pm 1\%$ deviation rule nor partisan nor incumbent interests can justify diluting the votes of these county residents.

35. The 21st and last public hearing was held by the LRC in Montgomery, Montgomery County, on October 18, 2011. Doc. 30-29. Again, elected officials and private citizens of Montgomery, Elmore, Bullock, and Autauga Counties urged

the LRC to respect county boundaries and limit the number of legislators in each county's local legislative delegation. *Id.* at 9-15, 19-21. A representative of the Alabama Association of County Commissions asked the LRC to make as many counties whole as possible all over the state, saying that the integrity of counties among House and Senate districts will be vital to the operation of county governments for the next ten years. *Id.* at 18.

a. Based on their populations, Autauga and Elmore Counties each needs only 2 House districts, and Montgomery County is the ideal size for 5 House districts, even within the LRC's $\pm 1\%$ restriction. Exhibit E, Doc. 60-5. The 2002 House plan had only divided Autauga County between the minimum 2 House districts. Exhibit V, Doc. 60-22. But Elmore and Montgomery Counties each had one more House district than are required by population, 3 House districts in Elmore County, and 6 House districts in Montgomery County. Exhibits V and JJ, Docs. 60-22 and 60-36. Act 2012-602 increases to 4 the number of House districts in Autauga County, keeps 3 House districts in Elmore County, and adds still another district to Montgomery County, dividing it into 7 House districts. Exhibits X and KK, Docs. 60-24 and 60-37.

b. Act 2012-603 decreased the number of Senate districts in Autauga County from 2 to 1, and in Elmore County from 3 to 2, and it maintained the

number of Senate districts in Montgomery County at 2. Exhibits W and Y, Docs. 60-23 and 60-25. But, overall, the number of members of Montgomery County's local legislative delegation representing outside counties increased from 3 (Coosa, Elmore, and Autauga), Exhibits V and W, Docs. 60-22 and 60-23, to 8 (Elmore, Autauga, Lowndes, Wilcox, Crenshaw, Butler, Conecuh, and Coffee). Exhibits X and Y, Docs. 60-24 and 60-25.

c. There is no compelling federal or state reason or rational basis for splitting Autauga, Elmore, and Montgomery Counties among so many House and Senate districts or for increasing the size of their local legislative delegations and the number of other counties whose residents elect members of their delegations. Neither the arbitrary $\pm 1\%$ deviation rule nor partisan nor incumbent interests can justify diluting the votes of these county residents.

Legal Grounds for Summary Judgment on Count III

36. The House and Senate districts in Acts 2012-602 and 2012-603 have been designed to promote the agenda of the partisan majority to maximize the number of seats statewide that Republicans will hold in the Legislature. But this statewide partisan policy has been pursued in a manner that dilutes the voting strength of county residents in electing the members of their local legislative delegations by unnecessarily splitting county boundaries and including in local

legislative delegations legislators who are elected in part by voters residing in other counties.

37. Plaintiffs do not allege that the rule of local courtesy and other constitutional, statutory, and internal legislative rules and procedures governing passage of local laws violate the Equal Protection Clause. Nor does the inclusion in a county's local delegation of some legislators who also represent voters in other counties always violate federal constitutional or statutory law. But, as the LRC was reminded in a public hearing, Doc. 30-25 at 15, the indiscriminate multiplication of House and Senate seats that unnecessarily cross county boundaries and increase the number of legislators and/or out-of-county constituents in the local delegation does violate the Equal Protection Clause by diluting the ability of county voters independently to choose the members of their local legislative delegation more than is required to comply with the statewide standard of equal population among House and Senate districts. Partisan and incumbency protection interests and the $\pm 1\%$ deviation restriction cannot justify this unnecessary dilution of the votes of a county's residents.

38. The Fourteenth Amendment rights of plaintiffs and the classes they seek to represent to equal protection of the laws are violated by the unnecessary division of their county boundaries between House and/or Senate districts, under both the

strict scrutiny and rational basis standards of federal constitutional law.

a. The dilution of the voting strength of residents of a county by the inclusion in their local legislative delegation of members whose constituencies unnecessarily include residents of another county violates their fundamental constitutional right to an equal and undiluted vote unless it can be justified by a narrowly tailored, compelling federal or state interest.

b. There is no rational basis for diluting the voting strength of residents of a county by the inclusion in their local legislative delegation of members whose constituencies unnecessarily include residents of another county.

39. In short, Acts 2012-602 and 2012-603 violate the Equal Protection Clause (1) because they deny the fundamental rights of county residents to an equal and undiluted vote for the legislators who control the laws governing their local governments, and (2) because they are “crazy quilts” that construct House and Senate districts with no rational basis.

40. The promotion of partisan political interests cannot justify the denial by Acts 2012-602 and 2012-603 of plaintiffs’ rights to equal protection of the laws by unnecessarily dividing counties among House and Senate districts. *Reynolds v. Sims*, 377 U.S. 533, 578-79 (1964) (“Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more

than an open invitation to partisan gerrymandering”). There is no compelling federal or state interest in the promotion of partisan interests, nor is the promotion of partisan interests a rational basis for violating plaintiffs’ equal protection right to an undiluted local legislative delegation.

41. The protection of incumbent interests, including the avoidance of incumbent conflicts, cannot justify denial by Acts 2012-602 and 2012-603 of plaintiffs’ rights to equal protection of the laws by unnecessarily dividing counties among House and Senate districts. The right to an equal and undiluted vote protects voters, not elected officials. Drawing House or Senate districts that unnecessarily multiply the number of counties represented by incumbents is an irrational justification for denying residents of those counties the equal protection of laws, whose purpose is precisely to restrict such multiple-county constituencies and to protect the independence of voters’ county representation in the Legislature.

42. The denial by Acts 2012-602 and 2012-603 of plaintiffs’ rights to equal protection of the laws by unnecessarily dividing counties among House and Senate districts cannot be justified by the Legislature’s arbitrary imposition of a strict rule limiting permissible population deviations among districts to $\pm 1\%$. There is no compelling federal or state interest, nor is there any rational basis, for such a deviation restriction when federal constitutional law expressly authorizes

deviations of $\pm 5\%$ or even higher for the purpose of preserving county boundaries, as counsel for the LRC affirmed at a public hearing. Doc. 30-25 at 8-9. The Chair of the LRC acknowledged that the $\pm 1\%$ restriction was adopted arbitrarily by majority vote of LRC members. *Id.* at 10.

43. The denial by Acts 2012-602 and 2012-603 of plaintiffs' rights to equal protection of the laws by dividing counties among House and Senate districts cannot be justified by the need to comply with the Voting Rights Act, either § 2 or § 5, 42 U.S.C. §§ 1973 and 1973c. The whole-county plans introduced by members of the Alabama Legislative Black Caucus, HB 16 and SB 5, demonstrate that the 27 black VAP-majority House districts and 8 black VAP-majority Senate districts can be preserved while limiting to 27 the number of counties having one or more members of their local legislative delegations than are necessary based on their populations, as compared with 49 such divided counties in Acts 2012-602 and 2012-603. Indeed, by splitting some precincts and census tracts, and by taking advantage of isolated variances in excess of $\pm 5\%$, the integrity of even more counties could be respected.

44. Viewed in their entirety, the plans in Acts 2012-602 and 2012-603 are "crazy quilts" that cannot be justified on any rational basis and thus violate the Equal Protection Clause. *Reynolds v. Sims*, 377 U.S. 533, 588 (1964) (Clark, J.,

concurring).

45. Viewed in their entirety, the plans in Acts 2012-602 and 2012-603 have the purpose and effect of minimizing the opportunities for black and white voters who support the Democratic Party to elect candidates of their choice, and thus they violate the rights of plaintiffs and the class they seek to represent to equal protection under the Fourteenth Amendment and to freedom of speech and association under the First Amendment.

WHEREFORE, plaintiffs pray that partial summary judgment with respect to Count III of their amended complaint be granted against all defendants and in favor of all plaintiffs and the class they seek to represent of residents of Alabama counties whose boundaries have been split among more House and/or Senate districts than are necessary to satisfy the Fourteenth Amendment requirement of substantial population equality and the Voting Rights Act.

Upon the entry of an order granting plaintiffs' motion for partial summary judgment, plaintiffs further pray that the Court will:

(1) Enter a declaratory judgment that the redistricting plans set out in Acts 2012-602 and 2012-603 violate the rights of plaintiffs and the class of residents of Alabama counties whose boundaries have been split among more House and/or Senate districts than are necessary to satisfy the Fourteenth

Amendment requirement of substantial population equality and the Voting Rights Act.

(2) Enter a preliminary and permanent injunction prohibiting the defendant Alabama Secretary of State, her officers, agents, attorneys, employees and those acting in concert with her or at her direction from enforcing Acts 2012-602 and 2012-603.

(3) Afford the Alabama Legislature a reasonable opportunity to adopt and to obtain preclearance under § 5 of the Voting Rights Act, 42 U.S.C. § 1973c, of new redistricting plans for the House and Senate that comply with Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973, and the First, Fourteenth, and Fifteenth Amendments to the Constitution of the United States.

(4) Should the Alabama Legislature fail in timely manner to enact lawful, constitutional, and enforceable redistricting plans for the Alabama House and Senate, instruct the parties to submit redistricting proposals that this Court would adopt in time for the orderly conduct of the primary and general elections for members of the Alabama House and Senate in 2014.

(5) Award plaintiffs their costs incurred in prosecuting this action, including an award of attorneys' fees and expenses, pursuant to 42 U.S.C. §§ 19731 and 1988.

(6) Grant such other and further equitable relief as the Court may deem just and equitable.

Respectfully submitted this 6th day of February, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2013, I served the foregoing on the following electronically by means of the Court's CM/ECF system: