UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CARA MCCLURE, *et al.*,

Plaintiffs,

v.

JEFFERSON COUNTY COMMISSION,

Defendant.

Case No. 2:23-cv-00443-MHH
consolidated with
Case No. 2:23-cv-00503-MHH

MCCLURE PLAINTIFFS' REPLY TO DEFENDANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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INTRODUCTION

The McClure Plaintiffs have presented strong direct and circumstantial evidence that race predominated in the district lines of the 2021 Enacted Plan and that Defendant's only timely proffered defense—core retention—is not race neutral. Three decades of Section 5 correspondence indicates that the Commission has maintained explicit racial targets in the districts without any justification. Nor does core retention in fact explain the racial composition of the 2021 Enacted Plan. Commissioners' statements during redistricting in 2021 confirm that specific neighborhoods were moved into districts in the 2021 Enacted Plan based on their racial makeup. Plaintiffs' experts' alternative plans further corroborate that core retention does not adequately explain the race-based choices in the Plan's design.

Unable to overcome these facts, Defendant now makes an eleventh-hour attempt to proffer new justifications for the 2021 Enacted Plan: that keeping Birmingham together and partisan gerrymandering explain the district lines. The Court should reject these belated assertions. Regardless, even if such rationales were timely raised, the evidence does not support either. Moreover, each serves as a proxy for race. Thus, across more than 160 pages of argument, Defendant has failed as a matter of law and fact to rebut Plaintiffs' evidence of racial predominance, and Plaintiffs are entitled to judgment in their favor.

I. Plaintiffs Have Shown That Race Predominated in the Drawing of the Challenged Districts in Violation of the Constitution.

Defendant's case rests on several misapprehensions of *Alexander v. S.C. Conf. of the NAACP*, 602 U.S. 1 (2024). First, Defendant insists that Plaintiffs must prove that "race alone" explains the challenged districts. *See, e.g.*, Doc. 177, FOF ¶ 131. But *Alexander* did not hold that race must be the *only* factor that explains district lines. In a racial gerrymandering challenge, plaintiffs must show that race was the "*predominant* factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Alexander*, 602 U.S. at 7 (*citing Miller v. Johnson*, 515 U.S. 900, 916 (1995)) (emphasis added). Plaintiffs carry their burden by showing that race was the prevailing motive, and that the redistricting body subordinated traditional race-neutral criteria to racial considerations. *Id*.

Second, *Alexander* concerned a distinct set of facts that are not analogous to the facts here. In *Alexander*, the state's map drawer testified that he drew a plan solely using partisan, not racial, data. *Id*. Here, the facts are precisely the opposite: the mapping software solely identified racial demographics, not party, and there is no indication that the Commission used or had access to partisan data. *See* Doc. 178, FOF ¶ 170.

Further, unlike here, *Alexander* featured no evidence from legislators' statements or the historical background of the redistricting process that race had ever been used to draw the challenged district—which was a majority white district (17% BVAP). *Alexander*, 602 U.S. at 19–20. Unlike here, no Section 5 submissions (or other evidence) emphasized the race-based nature of the district cores in *Alexander*. As a result, in *Alexander*, "core preservation," was a race-neutral criterion. Nothing in the case suggests that core preservation is *always* a race-neutral explanation for district lines. *Alexander* certainly does not hold that where, as here, core preservation involves an intentional decision to keep the cores of racially gerrymandered districts, the new plan somehow becomes race neutral. *See, e.g.*, *Chen v. City of Houston*, 206 F.3d 502, 518 (5th Cir. 2000) ("[E]vidence that impermissible racial intent had tainted the plan upon which the challenged plan was based has been allowed, even when enough time has elapsed for a substantial degree of familiarity and political reliance to emerge."); *Bethune-Hill v. Va. State Bd. of Elections*, 141 F. Supp. 3d 505, 544 (E.D. Va. 2015), *aff'd in part, vacated in part*, 580 U.S. 178 (2017) ("[W]here district lines track a path similar to their predecessor districts or where 'core retention' seems to predominate, courts should also examine the underlying justification for the original lines or original district."); *Jacksonville Branch of NAACP v. City of Jacksonville*, 635 F. Supp. 3d 1229, 1288 (M.D. Fla. 2022) ("Of

course, core preservation and incumbency protection do not address the question of how the 'cores' of these oddly shaped districts came to be in the first place.").

Here, core retention is a proxy for race. The Commission used express racial targets to draw the prior district lines. *Infra* Part I.A. As a result, the district cores the Commission chose to retain were race-based. On top of that, Commissioners' statements about the Enacted Plan demonstrate that race was the primary consideration for moving voters into and out of districts in 2021. *Infra* Part I.B. And Plaintiffs' experts show that core retention cannot explain the racial makeup of the Enacted Plan. *Infra* Part I.C.

A. The County's Section Five Submissions Reflect Explicit Intent to Create Racially Gerrymandered Districts.

Defendant asks this Court to disregard the evidence and conclude that the County's Section 5 submissions provide no evidence of racial intent. *See* Doc. 177, FOF ¶¶ 133-43. The Court has already rejected a similar argument as "distort[ing] history," because "[u]nder the [1986] *Taylor* consent decree, the Commission purposefully created majority Black populations in Districts 1 and 2." Doc. 164 at 55. It should do so again: the Commission's own statements evidence its intent to draw districts with specific racial targets and to maintain racial thresholds throughout the districts. When the Commission, including two Commissioners who had participated in the 2013 redistricting and the Section 5 submissions, Doc. 177,

FOF ¶¶ 358, 367, chose to retain those districts in 2021, that decision was informed by race.

Defendant is simply incorrect in insisting that the submissions never reference racial intent. *Contra* Doc. 177, FOF ¶ 143. Defendant implies that unless a submission uses some form of the word "intent," it cannot be probative of the Commission's motives. *See id.*[1] But the submissions include ample evidence of intent using synonymous language. Under the heading "A statement of the *reasons* for the change," in its 2001 submission, for example, the Commission explained that the changes to existing district lines would achieve population equality "without significantly changing the ratio of black and white population within the districts." PX06 at MCC01166–67 (emphasis added). Likewise, in its 1993 submission, the Commission cross-referenced the earlier description of the change to explain the "reasons for change." PX03 at MCC01024. That description explained: "The change in district boundaries will bring each district close to the ideal district population, without significantly changing the ratio of black and white population within the district." *Id.* at MCC01023. In other words, the Commission explicitly reported to

[1] It is irrelevant that *some* references to the reasons for changes in district boundaries in the Section 5 submissions deal with population equalization. *Contra* Doc. 177, FOF ¶ 143. The relevant regulations ask for a "statement of the reasons for the change." 28 C.F.R. § 51.27(m). One-person, one-vote requirements precipitated changes after each census, making them "the reasons for the change," *id.*, but that fact does not negate racial predominance. *Cf. Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 272 (2015) (equal population "is part of the redistricting background, taken as a given" and sheds little light on "*how* equal population objectives will be met").

the Department of Justice (DOJ) multiple times that the reason for the change included maintaining the racial ratios it had established in *Taylor*.

The submissions include other substantial evidence of racial predominance in past redistricting cycles that the Commission chose to carry over in 2021. *See* Doc. 178, FOF ¶¶ 32-52, 263-64. The submissions note that the Black population in each of the two majority-Black districts was more than 65%. *See* PX145 at 7 (2013 submission noting "[e]ach of these districts have majority black populations in excess of 65%, under the 2013, 2001 and 1993 plan" when actual populations approached or exceeded 75%); PX04 at MCC01264 (similar in 2004 submission); PX06 at MCC01167 (2001). That is no accident. At trial, experts Mr. Anthony Fairfax and Mr. Bill Cooper explained that, historically, jurisdictions seeking to comply with the Voting Rights Act (VRA) set a 65% target for the Black population in Black-opportunity districts. *See* Doc. 178, FOF ¶ 29.

In fact, the districts were significantly packed *beyond* that 65% target. The actual percentages exceeded 70% or 75%. *See* PX145 at 7 (2013 submission noting actual populations approaching or exceeding 75%); PX04 at MCC01264 (similar in 2004 submission); PX06 at MCC01167 (2001). There is no historical or contemporary evidence that the districts needed to pack in an additional 10-15% Black population on top of the 65% threshold to ensure Black voters could elect their preferred candidates.

To avoid doubt: there is nothing improper about using race to comply with the VRA. But it is both inappropriate and unconstitutional to set an arbitrary racial target that is untethered from any analysis of the level of Black population necessary for Districts 1 and 2 to elect Black voters' preferred candidates. *See, e.g.*, *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 267 (2015). These submissions make plain that the Commission did just that: it set a racial target to overconcentrate Black voters in just two districts, and it subsequently made an explicit effort to avoid "significantly changing the ratio of black and white population within the district," PX03 at MCC01023, consistently maintaining "districts [that] have majority black populations in excess of 65% under the 2013, 2001, and 1993 plan[s]," PX145 at 7; *see also* Doc. 178, FOF ¶¶ 37, 47, 53 (noting the County never conducted racially polarized voting analyses to support level of packing).

Defendant emphasizes the unremarkable fact that each of the submissions discusses the anticipated *effects* of the change, too. Doc. 177, FOF ¶ 141. But that language tracks what the County was obliged to report to the DOJ. *Cf.* Doc. 164 at 55 ("[T]he Commission did not share its plans with DOJ as a gesture of beneficent federalism."). The submissions explicitly indicated that they were "organized" to "set[] forth [ ] responses to the criteria listed in the Department of Justice regulations published at 28 C.F.R. § 51.27," the provision governing Section 5 submissions. PX145 at 4 (2013 submission); *see also* PX06 at MCC01163 (2001 submission using

same language); PX04 at MCC01261 (2004 submission organized to track 28 C.F.R. § 51.27); PX03 at MCC01022 (same). That provision requires information about "the anticipated effect of the change." 28 C.F.R. § 51.27 (n). The fact that the submissions echoed that precise language does not mean the Commission's responses were incidental by-products of race-neutral intent. *Contra* Doc. 177, FOF ¶ 141. And the reference to "effects" certainly does not negate the substantial—and often explicit—evidence of intent.

B. Commissioners' Comments on the Enacted Plan are Direct Evidence that Race Motivated the Commission's Redistricting Decisions.

Defendant ignores key statements from Commissioners at the November 4, 2021 meeting to elide the fact that the meeting provides substantial direct evidence of racial predominance. By Defendant's telling of events, Mr. Stephenson delivered his report to the Commission, constituents made comments about the plan ranging from supportive to ambivalent, and the Commission—except for Commissioner Scales—voted to adopt the plan. Doc. 177, FOF ¶¶ 186–207. Defendant further asks the Court to draw inferences that Commissioners' comments focused on "politics". *See, e.g.*, *id.* ¶ 241 ("*Implicitly*, Commissioner Scales was faulting Commissioner Tyson for adding what she thought were Ross Bridge Republicans and other non-Democratic areas to District 2.") (emphasis added).

This narrative ignores Commissioners' *explicit* statements that show race was front of mind. Commissioner Tyson explicitly discussed the race of various communities that the Commission added to her already-packed district. Discussing the portion of Oxmoor her district absorbed, Commissioner Tyson said: "It's a new subdivision which is 89 percent Democratic and black." DX10 at 42:10-12. She highlighted that Rosedale was "a 99.2 percent Black community." *Id*. at 41:19. And describing Bessemer, she noted that "the part that's over there by the police department, 99 percent Democratic, 99 percent Black." *Id*. at 42:16-19. Both Rosedale and Bessemer—neither of which is in Birmingham—were moved from a majority-white district into Commissioner Tyson's already-packed commission district (CD), CD2. The Court should reject Defendant's efforts to recast these comments.

Moreover, the record makes clear that, when Commissioners discussed party, they did so as a proxy for race. First, the Commission had access to racial, but not partisan data. Doc. 178, FOF ¶ 70; *see also Bush v. Vera*, 517 U.S. 952, 962–93 (1996) (finding that a redistricting body's easier access to racial data over partisan data via its redistricting software supported racial and not partisan gerrymandering). Second, Commissioners were not subtle in how they discussed party and race. Commissioner Scales noted: "We speak of Democratic versus Republican. You figure out what that looks like." DX10 at 33:21-22. At least one other court within

this Circuit has acknowledged and rejected similar pretense. *See Jacksonville NAACP*, 635 F.Supp.3d at 1248, 1252, 1295; *see also Alexander*, 602 U.S. at 8 n.1 ("A plaintiff can . . . establish racial predominance by showing that the legislature used race as a proxy for political interests.") (cleaned up); *see also Cooper v. Harris*, 581 U.S. 285, 291 (2017) (a plaintiff proves racial predominance "even if the evidence reveals that a legislature elevated race to the predominant criterion in order to advance other goals, including political ones.").

Similarly, Commissioner Tyson announced: "if you think I will draw myself into my demise, you got to be crazy," DX10 at 39:21-22, immediately before making an indisputable reference to her constituents' visible features. She explained that she knew what she was "getting" with the precincts added to her district because she visited the areas and "looked at the folks in the[ir] face." *Id*. at 40:21-23. Looking someone in their face cannot tell you their party registration. As Mr. Scott Douglas, who attended the November 4 hearing at which these comments were made, testified: "Looking people in the face meant to me I know what color you are." 1/14 Tr. 487:9-10 (Douglas). Unrebutted trial testimony from Mr. Benard Simelton and Mr. Eric Hall further confirms that Commissioner Tyson was focused on the racial makeup of her district, not party. *See* Doc. 178, FOF ¶¶ 89-91.

Defendant insists that Commissioners Scales' and Tyson's statements and the Commission's prioritization of core retention reflected political concern for

"functional" incumbency protection, not race. Doc. 177, FOF ¶ 234-35, COL¶¶ 430-31, 454. But just as race is not a permissible proxy for party, "[i]ncumbency protection achieved by using race as a proxy is evidence of racial gerrymandering." *Clark v. Putnam Cnty.*, 293 F.3d 1261, 1271–72 (11th Cir. 2002)*; see also Vera v. Richards*, 861 F. Supp. 1304, 1335–36 (S.D. Tex. 1994), *aff'd sub nom. Bush v. Vera,* 517 U.S. 952 (1996) (rejecting "talismanic status of incumbent protection in the State's argument" because "[i]ncumbent protection is a valid state interest only to the extent that it is not a pretext for unconstitutional racial gerrymandering."). Moreover, Commissioner Scales voted against the Enacted Plan, Doc. 178, FOF ¶84, and Commissioner Tyson recruited Mr. Hall into the effort to challenge the Enacted Plan after expressing concerns about it to Mr. Simelton, *id.* ¶¶89-91. An incumbent-protection plan does not typically lead to incumbents voting against or encouraging legal challenges to that plan.

The direct evidence in this case thus reveals two key points, both of which distinguish this case from *Alexander* and which bely Defendant's arguments. First, the historical evidence reveals that the districts' cores were race-based. That means the Commission's decision to prioritize core preservation is not a race neutral justification that avoids a conclusion of racial predominance. *See Covington v. North Carolina,* No. 1:15-CV-00399, 2018 WL 604732, at *4 (M.D.N.C. Jan. 26, 2018) (the redistricting body cannot "leapfrog" the origins of cores of previously

unconstitutional districts) (*affirmed by North Carolina v. Covington*, 585 U.S. 969, 978, (2018)); *Jacksonville Branch of NAACP v. City of Jacksonville*, No. 22-13544, 2022 WL 16754389, at *3 (11th Cir. Nov. 7, 2022); *Chen*, 206 F.3d at 521–22; *Jacksonville NAACP v. City of Jacksonville*, 635 F. Supp. 3d at 1280; *Bethune-Hill*, 141 F. Supp. 3d at 544–45. Second, on top of that, Commissioners focused heavily on the racial make-up of neighborhoods added to the already race-based cores they had chosen to preserve. *Supra* at 8–10.

C. Plaintiffs' circumstantial evidence corroborates that core retention does not explain the racial makeup of the Enacted Plan.

As explained, core retention is not a race-neutral justification in the circumstances of this case, but, in any event, Plaintiffs' experts' analysis confirms the direct evidence of racial purpose from the 2021 mapmaking process and demonstrates that core retention cannot explain the race-based choices in the design of the Enacted Plan.

Dr. McCartan created three sets of simulations to evaluate whether core retention offered a race-neutral explanation for district lines in the Enacted Plan, as Dr. Barber claimed, s*ee* DX31. Each simulation set prioritized core retention to a different degree, "weak," "medium," and "strong." PX30 at 17-18. In every simulation, the Enacted Plan was more extreme than 9 out of 10 simulated plans. 1/15 Tr. 574:24–575:2 (McCartan). The Enacted Plan's extreme racial composition

was statistically significant in the core retention "weak" and "medium" sets. *Id.* at 574:20–575:8.

The simulations that make up Simulation Set 5, the "strong" set, "maximize" core retention, resulting in a core retention range of 89.1% to 96.5%, which both matches and surpasses the Enacted Plan's 95.3% score. PX30 at 18. As a result, Simulation Set 5 properly accounts for the Commission's supposed reliance on this criterion. 1/15 Tr. 579:7-9 (McCartan); *contra Alexander*, 602 U.S. at 27 (not crediting an expert's simulations because they were "three standard deviations lower" than the Enacted Plan's). The Commission itself admitted that Simulation Set 5 "prioritiz[es] population equality and core retention about the same as the Commission." Doc. 99 at 7.

However, Defendant's singular reliance on Simulation Set 5 is flawed. This set restricts the simulations to the most stringent core retention parameters: that each district in the illustrative plan should be split at most once. PX30 at 18. Notably, this restriction could not itself have produced the 2021 Enacted Plan. The Enacted Plan splits CDs 3, 4, and 5 twice to move precincts into other districts. *See generally*, PX131. Thus, while Simulation Set 5 is useful to compare the Enacted Plan against a set of maps drawn with extremely strong core retention preferences, it provides an imperfect approximation of all the factors the Commission considered when drawing the Enacted Plan.

Simulation Set 5 does provide strong circumstantial evidence that race predominated in the 2021 Enacted Plan because its racial composition is a statistical outlier. Doc. 178, FOF ¶¶ 217-20; 1/15 Tr. 577:13-22 (McCartan). District 1's BVAP is more extreme than 90% of the maps drawn under Simulation Set 5's parameters. PX30 at 19. The Enacted Plan's packing-cracking score – a summary statistic that facilitates a comparison of the level of packing of Black voters in CDs 1 and 2 with the level of cracking of those voters in CD3 across all the alternative maps – is higher than in 98.49% of the simulations. Doc. 178, FOF ¶ 218; 1/15 Tr. 577:19-22 (McCartan). Thus, as Dr. McCartan concluded, prioritizing core retention is "not enough to explain the racial composition of the enacted plan's districts." Doc. 178, FOF ¶ 109; 1/15 Tr. 577:23–578:3 (McCartan). Dr. McCartan's core retention "weak" and "medium" sets also show that the racial composition of the Enacted Plan's districts is statistically significant. PX30 at 18. Compared to most maps within these sets, the districts in the Enacted Plan with the three highest BVAP shares were statistical outliers. *Id*. at 19. Accordingly, the Enacted Plan had a combined packing-cracking score that was more extreme than 99% of plans generated under the "weak" and "medium" core retention sets with two majority Black districts, meaning that the Enacted Plan packed Black voters into CDs 1 and 2 in a manner that was more extreme than all but 1% of simulated maps. *Id*.

In light of this evidence, Defendant's that CDs 1 and 2 in Simulation Set 5 are not statistically suspect and thus core retention explains the Enacted Plan are erroneous. *See* Doc. 177, FOF ¶¶ 83-84, 297, 356. This approach is contrary to the methodology that Defendant's own expert, Dr. Barber agrees with and relies upon. *See* DX31 at 45. Chen and Stephanopoulos urge reliance on multiple sets of simulations with slightly different criteria to best approximate the intent of a redistricting body in drawing district lines. *See* Brief for Amici Curiae Nicholas O. Stephanopoulos & Jowei Chen in Support of Appellees 34, *Alexander v. S. C. Conf. of the NAACP*, 602 U.S. 1 (2024) (No. 22-807). As they explain, "[t]he main benefit of this strategy is robustness: demonstrating that the expert's results aren't sensitive to particular choices about criteria and metrics, but rather remain stable as these parameters are varied." *Id.* By relying solely on Simulation Set 5 to the exclusion of all other evidence, including the two other core retention simulation sets, Defendant flouts this best practice and expert consensus. Such a narrow reading of the results of a single simulation set also obscures the significance of the relevant districtwide evidence that requires a more holistic analysis. *See Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 191–92 (2017) (*Bethune-Hill II*).

Moreover, Simulation Set 5's "strong" restrictions require the maintenance of the Enacted Plan's super-majority Black CDs 1 and 2 to the highest degree possible, which undermines the difference in the variables being tested. *Cf.* PX30 at 19

(showing two majority Black districts in 100% of Simulation Set 5 plans). It is no surprise that maximizing the preservation of already race-based cores in a simulation analysis will not lead to a statistically significant difference between race and core retention. *See* 1/15 Tr. 571:7-14 (McCartan) ("If the 2013 districts were drawn in a race-aware manner, then putting these cores into a simulation analysis would make the simulation analysis . . . in some ways, race aware.") And, of course, those circumstances are not race-neutral. *See Jacksonville NAACP*, 635 F. Supp. 3d at 1280 (noting that in assessing simulations analysis "core preservation and incumbency protection do not address the question of how the 'cores' of these oddly shaped districts came to be in the first place, only why they have remained so").

Simulation Set 5 shows that the racial composition of the Enacted Plan's CD3 is extreme in a statistically significant way, with a lower BVAP than 98.49% of the simulations. PX30 at 19. This indicates that almost all alternative maps would have met or exceeded the Enacted Plan's core retention without removing significant amounts of Black voters from a third district. Thus, because of CD3 alone, the Enacted Plan was always a statistically significant outlier. 1/15 Tr. 576:16-17 (McCartan). The Enacted Plan's CD3's BVAP is so extreme that the Enacted Plan's resulting packing-cracking score is equally extreme, meaning that the packing and cracking of Black voters in the Enacted Plan is more severe than in almost all (98+%) of the simulations in Simulation Set 5. *See* Doc. 178, FOF ¶ 218; 1/15 Tr. 577:19–

22. This level of extremity evidences that a factor other than core retention explains the racial composition of the Enacted Plan. Doc. 178, FOF ¶ 220; 1/15 Tr. 577:23–578:3 (McCartan).

Analyzing Simulation Set 5 at the precinct level, Dr. McCartan found that Black voters were still packed into CD1 to a statistically significant degree. Doc. 178, FOF ¶ 219; PX30 at 16. Several precincts on the boundaries of CD1 and CD2 were assigned to districts with particularly extreme BVAPs when compared to other maps in the set. Doc. 178, FOF ¶ 219; PX30 at 16. In the typical simulated plan, these "extreme" precincts were assigned to districts that are as much as 40 percentage points less Black than the districts they belong to under the 2021 Enacted Plan. Doc. 178, FOF ¶ 219; PX30 at 16. Dr. McCartan noted that many of these extreme precincts were the same precincts Dr. Barber claimed the Commission pulled into CDs 1 and 2 for reasons other than race. Doc. 178, FOF ¶ 219; PX30 at 16–17.

Finally, Mr. Cooper's Illustrative Plan D also demonstrates that the extreme racial composition of the Enacted Plan cannot be explained by core retention alone. Plan D has a core retention score of 85.7% when compared to the 2013 plan. Doc. 178, FOF ¶ 223; 1/13 Tr. 282:19-20 (Cooper). Plan D nevertheless reduces the BVAPs in CD1 and CD2 from 76.34% and 64.11%, respectively, to 62.77% and 62.16%. 1/13 Tr. 286:18-22 (Cooper); PX47; PX81. CD 4 shifts from 25.74% to

42.48% BVAP, and CD3 and CD5 show marginal shifts from 25.80% and 13.99% to 24.32% and 14.64% respectively. Doc. 178, FOF ¶ 223; 1/13 Tr. 286:23–287:3 (Cooper); PX47; PX81. Plan D demonstrates that the Commission could have drawn a map with high core retention that did not overconcentrate Black voters in certain districts. Doc. 178, FOF ¶ 223; 1/14 Tr. 352:11-12 (Cooper). Notably, harkening back to Dr. McCartan's statistical analyses, the district with the third highest BVAP under Plan D is nearly 20% higher in BVAP than the district with the third highest BVAP in the Enacted Plan, meaning that Plan D does not remove as many Black voters from a third district to achieve its high core retention score. *See* PX47; PX81.

Both Dr. McCartan's simulated alternative plans and Mr. Cooper's Illustrative Plan D actually show that the Commission had no need to overconcentrate Black voters in CDs 1 and 2 and severely reduce the number of Black voters in a third district to pursue a goal of core retention. *See Cooper*, 581 U.S. at 322 (alternative maps "actually show" that redistricting could have been done differently.)

II. The Court Should Reject the Defendant's Eleventh Hour and Post-Hoc Justifications.

Having failed to overcome Plaintiffs' evidence refuting the "core retention" defense, Defendant has attempted to assert new post-hoc justifications for the Enacted Plan's design: 1) that district lines follow Birmingham's municipal lines and 2) they were drawn to maintain Republican control of the Commission. Despite articulating these new defenses at the eleventh hour, Defendant faults Plaintiffs for

not demonstrating that the Commission could have achieved these newly asserted goals without packing Districts 1 and 2 with supermajorities of Black population. The Court should reject this transparent last-ditch effort that is unsupported by the record.

A. Keeping Birmingham Together

Defendant made a belated effort to argue that the real goal of the Enacted Plan was to keep Birmingham together as much as possible in two districts. This argument, mentioned only in passing in Defendant's summary judgment motion, became a focus of Defendant's arguments at the summary judgment hearing before this Court on December 19, 2024. *See* Doc. 156 at 15:1–16:8. At that time, defense counsel suggested that the Commission's Section 5 submissions reflected a desire to create two "Birmingham districts." The Court roundly rejected this argument as distorting history. *See* Doc. 164 at 54–55. The Court should reject the Commission's doubling-down at trial. *See e.g.*, Doc. 177, FOF ¶¶ 21, 45-46, 121, 261. Just as there is nothing in the Section 5 submissions reflecting a goal of drawing two Birmingham-based districts, there is nothing in the 2021 legislative record to suggest Commissioners cared about keeping Birmingham together. *See generally* DX10.

In its proposed findings of fact and conclusions of law, Defendant includes "Adding Birmingham neighborhoods and following Birmingham municipal lines in part" to explain the overall plan. Doc. 177, FOF ¶¶ 222-33. A post-hoc purported

concern with municipal boundaries—particularly Birmingham—does not pass muster. *Id*. ¶¶ 208-23; *see Bethune-Hill II*, 580 U.S. at 189–90. Defendant points to no discussion at the November 4 hearing to support the notion that Commissioners cared about adhering to municipal boundaries or keeping communities of interest intact. These issues did not come up. *See generally* DX10. Indeed, Mr. Stephenson repeatedly insisted, under oath, that the Commission does *not* seek to avoid municipal splits when redistricting. 1/15 Tr. 681:21–682:1; 705:20-24 (Stephenson); *see also* Doc. 178, FOF ¶226. Birmingham is also split among all five Commission districts in the Enacted Plan, belying the premise that the Commission sought to unite the city to the extent possible. *See* DX31 at 44 tbl.7; PX51 at1, 3.

Even assuming that Defendant's assertion of a Birmingham defense was timely, which it is not, an interest in keeping the city of Birmingham together does not explain the 2021 Enacted Plan. Such a rationale only makes sense if "Birmingham" is used as a proxy for "Black." *See, e.g.*, *Cooper*, 581 U.S. at 308 (the sorting of voters on the grounds of their race remains suspect even if race is meant to function as a proxy for other characteristics); *Miller*, 515 U.S. at 914. *See also, United States v. Briscoe*, 896 F.2d 1476, 1488 (7th Cir. 1990) (acknowledging that reliance on a potential juror's residence in a predominantly Black neighborhood could be pretext for discrimination).

As an initial matter, both Mr. Fairfax's and Mr. Cooper's Illustrative Plans show that alternative plans can maintain high populations of Birmingham in CDs 1 and 2—90.8% of Birmingham in Mr. Fairfax's plan and between 81.4% and 86.3% of Birmingham in Mr. Cooper's Illustrative Plans A through E—without an overconcentration of Black voters in those districts. DX31 at 44 tbl.7; PX92; PX98. Notably, Defendant relies almost exclusively on Defendant's Demonstrative 1, DD1, presented for the first time at trial, and Mr. Fairfax's analysis to support the Birmingham argument. Doc. 177, FOF ¶¶ 222–23. This ignores Mr. Fairfax's testimony that "[i]f you consider that Birmingham being a city municipality with a significant amount of Black population and you add more of that city to the majority-black districts, you're just adding that population to the majority-black districts." 1/13 Tr. 193:22–194:14 (Fairfax).

i. District 1

Nevertheless, Defendant contends that every precinct moved into CD1 included Birmingham neighborhoods, implying an intent to unite the city. Doc. 177, FOF ¶ 225. But the specific choice of precinct reveals that every whole precinct the Commission moved into CD1 was majority-Black, and the precinct's composition of Black voters outweighed whether it contained Birmingham neighborhoods. *See* 1/13 Tr. 38:24–39:1 (Fairfax); PX133 at 8; Doc. 178, FOF ¶¶ 172-73.

Defendant suggests that Precincts 1065, 1125, 1285, and 1365 were moved to unite Birmingham neighborhoods in CD1. Doc. 177, FOF ¶ 225. Accepting this as true does not explain why the choice was made to select Precinct 4090 as the only precinct removed from CD1, thereby removing Birmingham neighborhoods from CD1. *See* DD1. Nor does it explain why Precinct 3030, which also contains Birmingham neighborhoods, was not added to CD1. *Id.*

Understanding "Birmingham" as a proxy for "Black" illuminates the Commission's race-based choices. Precinct numbers, 1065, 1285, and 1365 correspond to the Center Point Community, Minor Fire Station, and Dolomite West Field Community Center precincts. The Commission alleges these precincts were moved to unite Birmingham neighborhoods in CD1, but their convenient use of precinct numbers obscures the identifiable names of these districts and that these changes occurred along racial lines. *See* DX18; *supra* Part I.B.

As Plaintiffs detailed in their proposed findings of fact, Doc. 178, FOF ¶¶ 172–84, 190–95, 198–203, 205–07, 211, these whole precinct moves targeted majority Black precincts in majority white districts, selected specifically to maintain CD1's super-majority Black population. Doc. 178, FOF ¶ 172. The Center Point Community Center precinct was moved from majority white CD4 to CD1. PX133 at 8 tbl.1; Doc. 178, FOF ¶205. And of the 6,202 voters in that precinct, 80.86% were Black and 12.61% were white. PX133 at 8; Doc. 178, FOF ¶ 205. The Minor

Fire Station precinct, which was 52.21% Black, was moved from majority white CD3 to CD 1. PX133 at 8 tbl.1; Doc. 178, FOF ¶ 172. In the Dolomite West Field Community Center precinct, the Commission moved 1,284 persons, 86.60% of whom were Black, into CD1 from majority white CD3, leaving less heavily Black neighborhoods in CD3. *See* PX133 at 8 tbl.1; Doc. 178, FOF ¶ 171.

The BVAP of the precincts also explains why the Commission selectively excluded precincts with Birmingham neighborhoods from CD1. The only precinct removed from CD1, Precinct 4040, the Fultondale First Baptist precinct, had Birmingham neighborhoods but a BVAP of only 24.2%, a stark 50%+ difference from CD1's average BVAP, which would have reduced the overall BVAP of CD1. DX31 at 11 fig. 2. Likewise, including the Pleasant Grove First precinct, Precinct 3030, would have united parts of Birmingham, but it would have added a precinct with a BVAP of only 50.1%, a 30% difference in BVAP from the precincts that were included in CD1. *See* PX1; DX31 at 15 fig. 4; Doc. 178, FOF ¶ 172.

ii. District 2

Alleged Birmingham-related precinct moves in CD2 reveal the consistency in the Commission's race-based decisions. Defendant alleges that moving the Church at Ross Bridge and the Oxmoor Valley Community Center precincts, Precincts 2365 and 2350, DX18, also included Birmingham neighborhoods. Doc. 177, FOF ¶ 227. Again, these precincts demonstrate that "Birmingham neighborhoods" is a proxy for

race. The Enacted Plan moves the 23.38% Black Ross Bridge precinct from majority white CD3 to majority Black CD2. PX131 at 30; Doc. 178, FOF ¶ 189. But out of the 2,068 Ross Bridge voters the Commission moved into District 2, 52.80% were Black. PX131 at 30; Doc. 178, FOF ¶ 189. The remaining portion of the Ross Bridge precinct is just 13.21% Black and remained in CD3 under the Enacted Plan. *Id.* at 30; Doc. 178, FOF ¶ 189. Splitting the Ross Bridge precinct meant the Commission could move a community that was 52.80% Black into CD2, leaving the portion that was 71.69% white in majority white CD3. PX131 at 31; Doc. 178, FOF ¶ 198.

The Oxmoor Valley Community Center precinct is majority white, with a BVAP of only 27.5%. DX31 at 38 fig.15; Doc. 178, FOF ¶ 207. Its inclusion in CD2 reduced the BVAP of CD2, but moving this precinct had the effect of lowering CD5's BVAP when, comparatively, the Commission had several other adjacent precincts it could have moved to CD2 that would have increased CD5's BVAP. *See* DX31 at 38 fig.15; Doc. 178, FOF ¶ 207. Notably, the Commission chose not to include more of Precinct 5280, Birmingham Botanical Gardens, in CD2. DD1; PX132 at 243. This precinct would have moved more Birmingham neighborhoods into CD2 but is 0% Black, thereby reducing CD2's BVAP without moving any Black population out of CD5. DD1; PX131 at 31. In lieu of this Birmingham precinct, the Commission instead chose to move into CD2 Precinct 2450, the adjacent Afton Lee

Community Center, also known as the Rosedale neighborhood, which is majority Black and has no Birmingham population. PX131 at 38–39; Doc. 178, FOF ¶ 190.

Dr. McCartan's hatch map analysis corroborates that these so-called "Birmingham" precincts were selected due to their racial makeup. The precincts that the Commission moved out of CD3 into CDs 1 and 2—including Minor Fire Station, Dolomite West, and Ross Bridge precincts—are in a district with a BVAP share that is higher than 95% of the districts in which Dr. Barber's simulations placed them. PX30 at 11; Doc. 178, FOF ¶ 195. Commissioner Tyson's public comments on redistricting that identified target neighborhoods in CD2 based on their racial makeup also supports that these specific communities were moved based on their high percentage of Black population, not their Birmingham neighborhoods. She stated:

> I pulled—Rosedale is a 99.2% Black community. 99.2% and they all Democrats. . . . Yes, Ross Bridge is a part of that, but it's across the street, which is 99% Republican. I got Mountain View part. I already have Oxmoor part. Oxmoor is already in my district. All I got was the Mountain View part which is hooked to Oxmoor. It's a new subdivision which is 89% Democratic and Black. You know how I know? Because I got up and I went over there and limped on my leg and knocked on the doors and seen for myself.

DX10 at 39:16–40:23; Doc. 178, FOF ¶ 191.

iii. Municipalities other than Birmingham

Without viewing Birmingham as a proxy for race, Defendant's selectivity about the other municipalities that it cares to unite follows no clear logic. For

example, Defendant gives no explanation as to why it did not want to add neighborhoods from the Adamsville or Hueytown municipalities to CD1, Doc. 177, FOF ¶ 226, but Adamsville and Hueytown have populations in CD1 both in the Enacted Plan and pre-2020 that could have been united if the Commission viewed uniting those municipalities as a priority. PX155.

In contrast, Defendant moved precincts pertaining to neighborhoods in the Bessemer and Homewood municipalities into CD2 because these municipalities are "already districted in District 2" without any further explanation of why uniting those specific municipalities matter more. Doc. 177, FOF ¶ 227. Yet, both Bessemer and Homewood have clearly identifiable Black populations outside of Birmingham. Mr. Cooper also pointed out that one need only look at the district lines in the 2021 Enacted Plan, which now include majority-Black populations in municipalities beyond Birmingham, to conclude that the Commission reached out to grab Black voters as they moved out of Birmingham. 1/13 Tr. 264:5–265:6 (Cooper); PX147; PX148; PX149; Doc. 178, FOF ¶ 284.

Bessemer is an area that has had a heavy concentration of Jefferson County's Black population since the 1990s, 1/13 Tr. 262:12-15 (Cooper); PX77; Doc. 178, FOF ¶ 121. Commissioner Tyson also identified Bessemer's inclusion in CD2 by its Black population: "I went to Bessemer . . . I got the part that was . . . 99 percent Democratic, 99 percent Black." DX10 at 39:16–40:23; Doc. 178, FOF ¶ 191. Before

2021, the Bessemer Civic Center precinct was wholly contained within CD3. PX131 at 28-29; Doc. 178, FOF ¶ 186. But during the 2021 redistricting process, the Commission split the Bessemer Civic Center precinct along racial lines. *Id.* at 28-29; Doc. 178, FOF ¶ 207. The precincts moved into Bessemer in CD2 are also consistent with race-based selection. The Enacted Plan takes 2,559 persons from the old Bessemer Civic Center precinct and moves them into CD 2. *Id.* at 28-29. 80.50% of those moved were Black. PX131 at 29; Doc. 178, FOF ¶ 207. Only 14.34% were white. PX131 at 29; Doc. 178, FOF ¶ 207 The portion of Bessemer Civic Center that the Commission left in CD3 is 10 percentage points whiter than the portion the Commission moved into CD2. PX131 at 28; Doc. 178, FOF ¶ 198. Dr. McCartan's hatch map analysis corroborates that Bessemer is in a district with a BVAP share that is higher than 95% of the districts Dr. Barber's simulation placed it in. PX30 at 11; Doc. 178, FOF ¶ 202.

Finally, the Commission's particular interest in reuniting parts of Homewood , even though it is not within Birmingham, is also consistent with racial predominance. Parts of Homewood were already in CD2 prior to the 2021 redistricting process, but additional, majority Black portions of Homewood were added to CD2 in the Enacted Plan. PX11 at 39:22–40:4; Doc. 178, FOF ¶ 282. Both Ms. McClure and Mr. Douglas testified that Homewood has a growing Black community. 1/13 Tr. 211:21–212:4 (McClure); 1/14 Tr. 482:2-3 (Douglas); Doc. 178, FOF ¶¶ 123, 125. The

Commission's reliance on keeping Birmingham and select other municipalities like Bessemer and Homewood "in part" is explicable only on the grounds of race, demonstrating that race predominated in the drawing of the district lines in the Enacted Plan.

B. Partisan Gerrymandering

As a final shift in strategy, the Defendant appears to suggest for the first time in its post-trial Findings of Fact and Conclusions of Law that the motivation behind the Enacted Plan was to maintain Republican control of the Commission. *See* Doc. 177, FOF ¶ 246 ("The Commission retained its political makeup, composed of 3 Republican commissioners and 2 Democratic commissioners"); *id*. COL ¶ 484 (complaining that one of Plaintiffs' illustrative plans "fails to mirror the politics of the Commission's plan; it would convert Commissioner Jimmie Stephens's district from a Republican district to a Democratic district").

If this is intended to inject a new defense that partisanship was an independent motive for the Enacted Plan, on top of the defenses of core retention and keeping Birmingham together (which Plaintiffs have already refuted), the Court should not countenance such an eleventh-hour shift in theories. Under *Alexander*, a defendant may, of course, rely on a defense that partisan gerrymandering drove a district's lines. But a defendant must at least *allege* that the defendant's goal was partisan gerrymandering before it becomes the plaintiff's burden to disentangle race from

partisanship. *Alexander*, 602 U.S. at 10 ("*After* the State asserted a partisan-gerrymandering defense, we faulted the plaintiffs for failing to show 'that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles'" (quoting *Easley v. Cromartie*, 532 U.S. 234, 258 (2001)) (emphasis added); *id.* at 19 ("[T]he application of this [racial predominance] test calls for particular care *when the defense contends* that the driving force in its critical districting decisions (namely, partisanship) was a factor that is closely correlated with race.") (emphasis added). Defendant should not be permitted to wait until the trial is over to assert a partisanship defense and then argue that Plaintiffs have not met their burden of refuting it.[2] *See Lowe's Home Ctrs., Inc. v. Olin Corp.*, 313 F.3d 1307, 1315 (2002) (holding district court does not abuse its discretion in denying a motion for leave to amend following the close of discovery, past the deadline for amendments and past the deadline for filing dispositive motions); *Britt Green Trucking, Inc. v. FedEx Nat., LTL, Inc.*, 2014 WL 3417569, at *12-13 (M.D. Fla. July 14, 2014) (rejecting effort to raise new defense at summary judgment where defendant, after years of litigating,

[2] The Commission's only affirmative defense regarding the merits was that "[t]he Commission did not racially gerrymander or discriminate on the basis of race when it drew new Commission districts." Def.'s Answer to McClure Pls.' Compl. at 32, Doc. 57. The Defendant has not sought leave to add a new affirmative defense that it was engaged in partisan gerrymandering at this late stage, and the time for doing so is certainly long gone.

"waited until the eleventh hour to bring this issue to the attention of Plaintiffs and this Court"). Without proper notice that the Commission's goal was to preserve Republican control, Plaintiffs had no reason to submit expert analysis and/or alternative maps showing how the Commission could maintain a Republican majority without assigning voters based on race. Instead, Defendant consistently argued that the Commission's non-racial goal was core retention, and accordingly Plaintiffs presented expert analysis and illustrative maps refuting *that* defense. *See* DX31 (calling core retention "the primary consideration used to create the enacted map"); Doc. 94 at 12 ("The Commission also indisputably prioritized 'core retention[.]'"); *id.* at 27 (arguing that Plaintiffs' alternative maps needed to echo the Commission's "nonracial criteria such as core retention and population equality"); Doc. 20 at 10 (citing *Abrams v. Johnson* for its affirmation of a state interest in "maintaining core districts"); Doc. 177, FOF ¶¶ 208-221; *see supra* Part I.; *see also* Doc. 178, FOF ¶ 213.[3]

[3] Defendant's changing explanations are confusing, so it is not entirely clear whether this new argument is intended to go beyond previous references to core retention as a form of "politics." *E.g.*, 12/19/24 Hr'g Tr. at 91, Doc. 154 (counsel for Defendant arguing that "[a]ll of these are small "p" political statements about wanting to retain their existing constituents on the eve of their reelection campaigns"). Wordplay aside, Defendant has consistently portrayed core retention as a good-government practice aimed at keeping constituents together so that they understand who represents them, not as an effort to maintain Republican control of the Commission. *See, e.g.*, DX31 at 7–8 (Barber Rep.) (It is common for lawmakers to seek to retain large portions of their old districts, and political science research suggests that doing so can have positive benefits for voters and representation in general. Research in political science shows that core retention is an important factor for voters and redistricting.)

Nor, even now, can Defendant point to any evidence in the legislative record or from anyone who participated in creating the Enacted Plan that the changes were designed to shore up Republican control of the Commission. As the Supreme Court has made clear, "[the] racial predominance inquiry concerns the actual considerations that provided the central basis for the drawn lines, not *post hoc* justifications the legislature in theory could have used but in reality did not." *Bethune-Hill II*, 580 U.S. at 189–90. Indeed, when a party provides shifting and inconsistent reasons for its actions, the finder of fact can conclude that the party simply lacks credibility. *See Cleveland v. Home Shopping Network, Inc.*, 369 F.3d 1189, 1194 (11th Cir. 2004).

Here, the only evidence of partisanship comes from two Democratic Commissioners, both of whom had beyond safe Democratic districts. *See generally* DX10. To accept Defendant's newfound suggestion that partisan efforts drove the Enacted Plan, one would have to believe that these Commissioners sought to entrench themselves in a 3-2 minority. *Contra Alexander*, 602 U.S. at 13 (noting that it was the Republican-controlled legislature who explicitly advocated for creating a stronger Republican tilt in the challenged District 1).

Here the record is clear that the Commissioners had access to racial data, when drawing the new districts, but there is no indication in the record that Commissioners had access to partisan data. Doc. 178, FOF ¶ 227. By contrast, in *Alexander*, the facts

were precisely the opposite: the state's map drawer testified that he drew a plan solely using partisan, not racial data. 602 U.S. at 7.

In any event, Plaintiffs' experts show that the racial composition of the Enacted Plan was not necessary to maintain the partisan lean of the County. Dr. Liu concluded that both CD 1 and CD 2 in the Enacted Plan unnecessarily pack Black voters, to the extent that the Black-preferred candidates won almost 90% of the total votes. 1/14 Tr. 390:10–391:15 (Liu). Although Plaintiffs' Illustrative Plans B and C both unpack the heavy concentration of Black voters in CDs 1 and 2, Black-preferred candidates would still only win in those two districts. In Plan C, CDs 3, 4, and 5, on average, would not result in a change to the partisan composition of the Enacted Plan. PX24 at 8 tbl.2 (noting the average percentage vote for the Black preferred candidate at 46%, 49% and 29% in CDs 3, 4, and 5 respectively). Likewise, Plan B, is closer but, on average, is also not likely to change the partisan composition of the Enacted Plan. *See* PX25 at 7 tbl.2 (noting the average percentage vote for the Black preferred candidate at 50%, 48%, and 29% in CDs 3, 4, and 5 respectively.). These alternative maps show that if the Commission was "sincerely driven by its professed partisan goals" it could have achieved them in ways that are consistent with traditional redistricting principles without the predominate use of race. *Alexander*, 602 U.S. at 10; *Cromartie*, 532 U.S. at 258.

Finally, even if the Court were to accept Defendant's last-minute partisanship and incumbency defenses as timely, it should reject them due to the Commission's use of race as a proxy. *See supra* Part I.B. *See also Alexander*, 602 U.S. at 8 n.1 (explaining that plaintiff can prove predominance if race is used as a proxy for party); *Cooper*, 581 U.S. at 291 (same); *Clark.*, 293 F.3d at 1271–72 (articulating same principle for incumbent protection).

For all these reasons, the Court should not entertain Defendant's belated attempt to raise a partisanship defense, if that indeed is now the Defendant's intention.

C. Plaintiffs Have Not Asked the Court to Draw Adverse Inferences from Defendant's Invocation of Legislative Privilege.

Defendant mischaracterizes Plaintiffs' refusal to indulge eleventh-hour post-hoc justifications as Plaintiffs asking the Court to draw adverse inferences from Defendant's invocation of legislative privilege. Doc. 177, COL ¶¶ 502–03. To be clear, Plaintiffs have not argued that the Court can draw such adverse inferences; they are not asking the Court to treat the invocation of legislative privilege as evidence that the Commission must have been predominantly motivated by race.

As explained in Plaintiffs' Proposed Findings of Fact and Conclusions of Law, the Commissioners exercised legislative privilege and declined to provide testimony on their role or motivations in the redistricting process. Doc. 178, FOF ¶ 56; *see also* PX08; PX09. Having repeatedly "retreat[ed] behind the shield of legislative

privilege when it suits [the Commission]," *Singleton v. Merrill*, 576 F. Supp. 3d 931, 940 (N.D. Ala. 2021) (three-judge court), Defendant is barred from selectively wielding it as a sword to offer self-serving evidence and testimony at trial. *See id*. at 941 (rejecting legislators' attempt to "put in issue factual and legal defenses that depend on their assertions about their intent" but then "refuse to participate in any discovery").

Yet, Defendant seeks to do precisely that, which is what Plaintiffs are objecting to. For example, Mr. Stephenson's testimony reflected only his own observations of the district lines and was not based on any conversations with the Commissioners who actually drew the lines. *See* Doc. 178, FOF ¶ 65. Similarly, Dr. Barber's testimony did not reflect any discussions with Commissioners about their motives but was purely his speculations about what the Commissioners *might* have sought to achieve—based on a cherry-picked assessment of the public legislative record. *See id.* ¶ 114.

Plaintiffs have therefore argued that neither Mr. Stephenson nor Mr. Barber can speak to alleged reasons why the Commissioners may have moved specific precincts or drawn certain boundaries, if the public record does not confirm that the Commissioners themselves were motivated by those reasons. Doc. 122 at 6–10. Any such testimony not only violates the sword-and-shield doctrine, but is rank hearsay, because Mr. Stephenson has consistently testified that the Commissioners were

solely responsible for drawing the district lines. 1/15 Tr. 702:14-18, 703:5-14 (Stephenson). The Court does not need to draw any adverse inferences to recognize that this evidence is a series of speculations about motive and give it appropriately limited weight.

CONCLUSION

For the foregoing reasons, this Court should grant judgment to Plaintiffs.

Respectfully submitted this 18th day of February, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system which provides electronic notice of filing to all counsel of record.

This 18th day of February 2025.

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