

**IN THE 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

MCCLURE PLAINTIFFS' REMEDIAL PLAN SUBMISSION

The *McClure* Plaintiffs respectfully submit the attached proposed remedial plan (the “*McClure* Remedial Plan”) for the Jefferson County Commission (“Commission”) for use starting in the 2026 elections. The *McClure* Remedial Plan fully remedies the unconstitutional racial gerrymanders this Court identified in its Findings of Fact, Conclusions of Law and Order. Doc.191 (“Op.”). It is fully consistent with all statutory and constitutional requirements. It also satisfies the Commission’s purported policy and political goals, outperforming the Commission’s 2021 redistricting plan (the “Enjoined Plan”) on all race-neutral traditional redistricting criteria. Plaintiffs do not request oral argument or an evidentiary hearing but are prepared for one if requested by the Court.

BACKGROUND

Following a four-day trial, this Court concluded that Plaintiffs “established that race predominated in the Commission’s revisions to its five districts following the 2020 census.” Op. at 138. In Districts 1 and 2 of the Enjoined Plan, the Commission “departed from traditional redistricting criteria” to “follow the movement of Black citizens from the City of Birmingham and place those citizens in Districts 1 and 2.” *Id.* at 118. The Commission also “redrew the boundaries of Districts 3, 4, and 5 to remove Black voters from these districts.” *Id.* at 131. Collectively, these efforts enabled the Commission to “maintain supermajority-Black populations in Districts 1 and 2 at the expense of traditional redistricting criteria.” *Id.* at 119. The Commission pursued racial targets, despite the complete lack of “evidence that indicates that Black voters required Black supermajorities ... to select candidates of their choice.” *Id.* at 107. This Court found “the Commission’s purported reliance on traditional redistricting criteria to explain the” Enjoined Plan “not credible.” Op. at 107. Rather, the Court found that the weight of the extensive direct and circumstantial evidence showed that, in the 2021 redistricting process, “[r]ace was the factor that could not be compromised.” *Id.* at 124.

LEGAL STANDARDS

“Redistricting is primarily the duty and responsibility of the State.” *Perry v. Perez*, 517 U.S. 899, 392 (2012) (internal quotation marks omitted). But where, as

here, the relevant government body refuses to act, this Court has “its own duty to cure illegally gerrymandered districts through an orderly process in advance of elections.” *North Carolina v. Covington*, 585 U.S. 969, 977 (2018) (declining to give “second bite at the apple” to state that failed to submit acceptable remedial plan).

To evaluate the appropriateness of a remedy in a racial gerrymandering case, this Court must assess three factors. First, and foremost, the “remedy must be related to the *condition* alleged to offend the Constitution and must be *remedial* in nature, that is, it must be designed as nearly as possible to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.” *Shaw v. Hunt*, 517 U.S. 899, 915 (1996) (cleaned up) (emphasis in original); *Whitest v. Crisp Cnty. Sch. Dist.*, 2023 WL 8627498, at *2 (11th Cir. Dec. 13, 2023) (11th Cir. 1987) (addressing a Voting Rights Act claim); *see also Covington*, 585 U.S. at 973 (rejecting a remedial plan that merely resulted in “perpetuating the effects the prior racial gerrymander”) (citation omitted). Second, this Court must determine whether the proposed remedial plan comports with all other statutory and constitutional requirements, including one-person-one-vote and the Voting Rights Act (“VRA”). *Perry*, 565 U.S. at 393. Third, in selecting an appropriate remedy, the Court “should be guided by the legislative policies underlying the existing plan,” *but only* “to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act.” *Abrams v. Johnson*, 521

U.S. 74, 79 (1997). The Enjoined Plan “serves as a starting point” that gives “important guidance” to this Court. *Perry*, 565 U.S. at 394.

ARGUMENT

Assessed using the relevant factors, the *McClure* Remedial Plan is a complete and lawful remedy to the constitutional violations this Court identified in the Commission’s Enjoined Plan.

I. The *McClure* Remedial Plan Fully Remedies the Unconstitutional Racial Gerrymander.

To prepare a map to remedy the constitutional violation, Plaintiffs retained Dr. Cory McCartan, Assistant Professor of Statistics and Political Science at the Pennsylvania State University. Dr. McCartan began with Mr. William Cooper’s illustrative Plans B and C. *See* Doc. 212, Ex. A at 1 (McCartan Decl.). He did not review racial data in drafting his own plans, nor when reviewing the Cooper plans. Dr. McCartan was instructed to rely exclusively on traditional nonracial redistricting criteria to devise a remedial plan. *Id.* at 1. He sought to maintain contiguity, revised the Cooper plans to unpair any incumbents, prioritized avoiding splits of cities, towns, and other communities of interest, and focused on compactness. *Id.* at 1. Dr. McCartan also kept the population deviation within 1% per district, in line with the Enjoined Plan, and relied on precinct data instead of voting tabulation districts (VTDs). *Id.* at 1. Finally, Dr. McCartan tabulated the racial demographics of each district only after drawing the *McClure* Remedial Plan and only for the “lawful

purpose” of “check[ing] that the maps he produced complied with [federal] Voting Rights Act precedent.” *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 22 (2024) (map-drawer’s testimony that he reviewed racial data after drawing challenged plan did not raise racial gerrymandering concerns).

In his drafting, Dr. McCartan did not consider data that identified the race of individual voters, nor did he seek to pursue any racial targets in drafting the districts in the *McClure* Remedial Plan. This approach was more cautious than precedent requires. *Cf. Covington*, 585 U.S. at 977-78 (declining to fault a court-appointed map-marker for using racial data to devise a remedial plan); *Singleton v. Allen*, 782 F. Supp. 3d 1092, 1358 (N.D. Ala. 2025) (three-judge court) (noting special master’s remedial plan drawn without using race, even though “federal law does not require a [VRA] remedial plan to be prepared race-blind”).

In the resulting plan, Black voters are no longer unnecessarily packed into Districts 1 and 2, or stripped out of Districts 3, 4, and 5, in contravention of traditional race-neutral redistricting principles. McCartan Decl. at 2-6; *see also* Doc. 212, Ex. B at 1-4 (Liu Decl.). As assessed using simulation analyses this Court has previously credited, *see, e.g.*, Op. at 60-61, no district in the *McClure* Remedial Plan is an outlier in terms of BVAP, *see* McCartan Decl. at 7-8. Thus, the *McClure* Remedial Plan is an appropriate remedy to the Commission’s race-based sorting of voters. *Covington*, 585 U.S. at 977-78.

II. The McClure Remedial Plan Complies with the VRA and One-Person-One-Vote.

Once a reviewing court determines that a proposed remedial plan “*completely* remedies” the identified violation, *Dillard v. Crenshaw Cnty. Ala.*, 831 F.2d 246, 250 (11th Cir. 1987) (quoting 1982 U.S. Code Cong. at 208 (emphasis in the original)), the Court must also ensure that the proposed remedy complies with the VRA and the Constitution. *Abrams*, 521 U.S. at 90. The *McClure* Remedial Plan satisfies all constitutional and statutory requirements.

A. Population Equality

“[A]n apportionment plan with a maximum population deviation under 10%” generally satisfies the federal constitutional one-person one-vote principle. *Brown v. Thomson*, 462 U.S. 835, 842 (1983). The Commission has set for itself “a 1% deviation standard [that] is ‘a more rigorous deviation standard than [Supreme Court] precedents have found necessary under the Constitution.’” Mem. & Order on Pls. Prelim. Inj., Doc. 54 at 24 n.15 (quoting *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 272 (2015)). In the *McClure* Remedial Plan, the maximum population deviation meets that more rigorous standard; it is 0.59% as compared to the higher 0.88% in the Enjoined Plan. McCartan Decl. at 2-3.

B. Section 2 of the Voting Rights Act

If a remedial plan “corrects the original violation [the court] found, but violates Section Two [of the VRA] ... [the court] may not accept it.” *Singleton v.*

Allen, 690 F. Supp. 3d 1226, 1288 (N.D. Ala. 2023), *stay denied sub nom. Allen v. Milligan*, 144 S.Ct. 476 (2023). The *McClure* Remedial Plan satisfies the VRA’s requirements. Ex. C (Bagley Decl.); Liu Decl. at 1-4.

A jurisdiction may be liable for vote dilution under Section 2 of the VRA if three preconditions are met: “(1) the racial group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the racial group is politically cohesive; and (3) the majority votes sufficiently as a bloc to enable it ... usually to defeat the minority’s preferred candidate.” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 425 (2006). If all three preconditions are established, “the statutory text directs [courts] to consider the ‘totality of circumstances’ to determine whether members of a racial group have less opportunity than do other members of the electorate.” *Id.* at 425-26.

Evidence presented at trial and credited by this Court suggests that any remedial plan this Court adopts must include two majority-Black districts. The Black VAP in Jefferson County is sufficiently large and geographically compact enough to constitute at least two majority-Black districts, Op. 48, and likely as many as three majority-Black districts, *cf.* Op. 54 (noting that three of the districts in the Plaintiffs’ illustrative plan D ranged from 42.8% to 62.77% Black VAP).

Moreover, based on the expert testimony in this case, this Court found that “Jefferson County elections exhibit consistently extreme levels of [racially polarized

voting] because, in each election ... the vast majority of Black voters (over 90% in every election) and only a small minority of white voters (between 9.3% and 22.4%) cast their votes for the Black[-preferred] candidate.” *Id.* at 82-83 (citing Doc.169-21, 173). In prior litigation challenging the Commission’s electoral system under Section 2 of the VRA, the Commission stipulated that “polarized voting led to the defeat of Black preferred candidates in Jefferson County.” *Op.* at 11 (citing Doc.176-2).

There is also voluminous evidence indicating that Black voters in Jefferson County have less opportunity than white voters to participate in the political process under the totality of the circumstances. *See Ex. C* at 23 (Bagley Decl.) (concluding that “Senate Factors 1, 2, 3, 5, 6, 7, and 8 are present in Jefferson County”); *see also Op.* at 11-12. For example, in just the last fifteen years, Black people in Jefferson County and statewide have suffered racial discrimination in voting, education, employment, and housing. *See, e.g., Allen v. Milligan*, 599 U.S. 1 (2023); *Stout v. Jefferson Cty. Bd. of Educ.*, 882 F.3d 988 (11th Cir. 2018); *Singleton*, 782 F. Supp. 3d at 1115-16; *Ala. State Conf. of NAACP v. Marshall*, No. 2:24-CV-00420-RDP, 2024 WL 4282082, at *7 (N.D. Ala. Sept. 24, 2024); *United States v. Hous. Auth. of Ashland*, No. 1:20-cv-01905-AMM, 2022 WL 18674400 (N.D. Ala. Dec. 13, 2022); *Jones v. Jefferson Cnty. Bd. of Educ.*, No. 2:19-CV-01821-MHH, 2019 WL 7500528, at *3 (N.D. Ala. Dec. 16, 2019); *Ala. State Conf. of the NAACP v. Pleasant*

Grove, No. 2:18-cv-02056-LSC, 2019 WL 5172371 (N.D. Ala. Oct. 11, 2019); *Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026 (M.D. Ala. 2017) (three-judge court); *United States v. Jefferson Cnty.*, No. 74-S-17, 2013 WL 4482970 (N.D. Ala. Aug. 20, 2013).

Here, the *McClure* Remedial Plan, drawn without reference to race, continues to give Black voters the ability to elect candidates of choice in two districts. *See* Liu Decl. at 2-3 (effectiveness analysis showing two districts where Black voters have an equal opportunity to elect their preferred candidates in the *McClure* Remedial Plan); McCartan Decl. at 6-7 (same).

III. The McClure Remedial Plan Performs as well as or Better Than the Enjoined Plan on All Legitimate and Nonracial Traditional Redistricting Criteria.

The “general rule” is that courts “should be guided by the legislative policies underlying a state plan—even one that was itself unenforceable—to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act.” *Perry*, 565 U.S. at 393. “Traditional redistricting criteria ‘includ[e] compactness, contiguity, respect for political subdivisions or communities defined by shared interests, incumbency protection, and political affiliation.’” *GRACE, Inc. v. City of Miami*, 684 F. Supp. 3d 1285, 1319 (S.D. Fla. 2023) (quoting *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 272 (2015)) (alteration in the original).

This list “is not exhaustive, nor is the reviewing court required to consider each consideration when evaluating the redistricting plan.” *GRACE, Inc.*, 684 F. Supp. 3d at 1319. Indeed, courts must not give controlling weight to traditional redistricting criteria like core retention and incumbent protection that are likely to recreate the previous constitutional violation or any unlawful aspects of a challenged plan. *See, e.g., Covington*, 585 U.S. at 973-74 (rejecting remedial plan that sought to retain the core of racially gerrymandered districts); *Abrams*, 521 U.S. at 89 (rejecting a “least change” proposal that retained the most egregious features of the prior racial gerrymander). Adhering blindly to these improper criteria would simply produce a remedial plan that “result[s] in the perpetuation of the unconstitutional effects of [a municipality’s] history of racial gerrymandering.” *Jacksonville Branch of NAACP v. City of Jacksonville*, No. 3:22-cv-493, 2022 WL 17751416, at *19 (M.D. Fla. Dec. 19, 2022) (“*Jacksonville II*”) (adopting plan that did not protect all incumbents).

With respect to race-neutral traditional criteria, the *McClure* Remedial Plan outperforms the Enjoined Plan on every measure. McCartan Decl. at 2-6. Dr. McCartan observed the neutral goals of compactness, contiguity, incumbent protection, partisan balance, and avoiding unnecessary municipality and precinct splits. McCartan Decl. at 1. Although not required of a remedial plan, the *McClure*

Remedial Plan meets or beats the Enjoined Plan on all the above criteria. *Cf. Singleton v. Allen*, 2023 WL 6567895, at *17 (N.D. Ala. Oct. 5, 2023).

The sole criterion that the *McClure* Remedial Plan does not advance to the same level as the Enjoined Plan—core retention—is not a legitimate factor to prioritize in a remedial plan. Under the circumstances of this case, “seeking to preserve the ‘cores’ of unconstitutional districts ... ha[s] the potential to embed, rather than remedy, the effects of an unconstitutional racial gerrymander in a proposed remedial plan.” *Covington I*, 283 F.Supp.3d at 431; *see also Milligan*, 599 U.S. at 21-22 (rejecting state’s reliance on core retention to justify new districting plan that perpetuated past discrimination).

A. The McClure Remedial Plan Uses Precincts, Rather than VTDs, and Splits Fewer Precincts than the Enjoined Plan.

The *McClure* Remedial Plan splits 16 precincts, compared to 18 in the Enjoined Plan. McCartan Decl. at 3. These precinct splits are necessary to satisfy one-person-one-vote, achieve the Commission’s goal of ensuring a less than one percent population deviation per district, and because some municipalities have extremely irregular boundaries. *Id.* at 4. Because the Commission previously criticized Plaintiffs’ alternative maps for using VTDs, rather than precincts, Doc. 194 at 13, the *McClure* Remedial Plan used the Commission’s preferred current precinct data and the addresses for the Commissioners provided by their counsel in late September 2025. Moreover, the Commission represented in its motion to stay

this Court’s injunction that modifying a remedial plan to follow precinct lines “would add significantly to the time required to accurately implement any new districting plan ... to be used for forthcoming elections.” Doc. 194-1 at 4-5 (Stephenson Decl.). Assuming this representation is accurate, the *McClure* Remedial Plan’s use of the Commission’s most recent precinct lines should obviate the Commission’s self-imposed October 20, 2025 deadline, which allotted significant time to substitute VTDs for precincts. *Id* at 5.

B. The *McClure* Remedial Plan Preserves Political Subdivisions and Communities of Shared Interests.

The *McClure* Remedial Plan splits 23 municipalities identified as communities of interest a total of 33 times, whereas the Enjoined Plan splits 28 such communities a total of 36 times. McCartan Decl. at 4.

The *McClure* Remedial Plan keeps whole more of the municipalities where Black voters migrated outside of Birmingham than does the Enjoined Plan. Op. 118. For example, the Remedial Plan does not split Brighton, Fultondale, Midfield and Leeds, and keeps as much or more of Homewood, Hoover, Irondale, Bessemer, Center Point, Trussville, and Tarrant together than the Enjoined Plan. *Compare* McCartan Decl. at 5, Tbl. 3, *with* 11, Tbl. 10.

C. The *McClure* Remedial Plan is Compact and Contiguous.

The *McClure* Remedial Plan is more compact than the Enjoined Plan when assessed using three standard measures of geographic compactness: Polsby-Popper,

Reock, and Convex Hull. McCartan Decl. at 4-6. These measures are routinely credited by federal courts. *See Cooper v. Harris*, 581 U.S. 285, 311 (2017) (noting that Reock scores are “expert-speak” for compactness); *Singleton*, 782 F. Supp. 3d at 1265-66 (using Polsby-Popper, Reock, and Convex Hull to assess compactness).

All districts in the *McClure* Remedial Plan are contiguous. McCartan Decl. at 8.

D. The *McClure* Plan Satisfies the Commission’s Alleged Incumbent Protection, Partisan, and Core Retention Goals to the Greatest Extent Possible While Also Remediating the Constitutional Violation.

The Commission has asserted several alleged policy and political goals, including incumbent protection, partisanship, and core retention, to try to explain its racial gerrymander. *See, e.g.* Doc. 194 at 7-9; Doc.202 at 4-6; Appellant Br. at 12-15,17-18; Doc. 177 at 52-67. This Court correctly rejected the Commission’s unsupported justifications. Op. 107-08,110. In an abundance of caution, however, the *McClure* Remedial Plan attempts to address each of these justifications to the extent possible.

First, the *McClure* Remedial Plan does not pair any incumbents. McCartan Decl. at 8.

Second, the *McClure* Remedial Plan maintains a partisan balance that is comparable to the Enjoined Plan. McCartan Decl. at 10; *accord Alexander*, 602 U.S. at 10 (explaining that an alternative map need only be “comparably consistent” with

an enacted plan) (citation omitted). Without evidence to support its contention, the Commission has claimed in recent briefing that it sought to ensure a partisan gerrymander. Doc. 194 at 9; Appellant Br. at 11-12. This Court correctly concluded that “[t]he Commission did not have partisan political data available to it when redistricting, but its mapping software included racial data.” Op.120. At trial, the Commission presented no evidence that it sought to create a partisan gerrymander. *See, e.g.* Op. 47,110; Doc. 174 Tr. 684:13-14,719:9 – 720:23

Nonetheless, after completing the *McClure* Remedial Plan, Dr. McCartan reviewed political data to determine its partisan impact. McCartan Decl. at 6-7. As assessed using a reconstituted elections analysis, the *McClure* Remedial Plan remedies the constitutional violation this Court identified while not altering the partisan composition of the Commission to the extent practicable. *Id.* Dr. McCartan found that Democrats will continue to consistently win the great majority of the vote share (ranging from 75.0% to 68.8%) in CCD1 and CCD2, while in CCD3 and CCD5 Republicans consistently win overwhelming majorities of the vote share (ranging from 59.1% to 61.8%). *Id.* In District 4, the *McClure* Remedial Plan also maintains the Republican partisan lean. *Id.* Dr. McCartan found that Republican candidates would have won in four of the seven analyzed races. *Id.* In one of the three remaining elections, the Democrat won with only 50.5% of the vote—essentially a tie. *Id.* Moreover, Dr. Liu’s effectiveness analysis, which looked at six

biracial elections, found that the Black-preferred candidate (who in general elections was always a Black Democrat) lost six of the six analyzed elections. Liu Decl. at 1. On average, Dr. McCartan found that the Republican candidate received 51% of the vote total in CCD4 and the Democratic candidate will usually receive only about 49% of the vote. McCartan Decl. at 6-7; *see* Op. at 85 (agreeing that Plaintiffs’ alternative maps with a similar partisan balance “would not result in a change to the partisan composition of the 2021 plan”).

Third, the *McClure* Remedial Plan does not retain the cores of the 2013 racially gerrymandered districts to the same extent as the Enacted Plan. However, in this remedial posture, prioritizing a “high core retention rate[] [would] provide circumstantial evidence of [] intent to preserve the features of the previously unconstitutional district[s].” *GRACE, Inc.*, 684 F. Supp. 3d at 1307-08; *Jacksonville II*, 2022 WL 17751416, at * 14 (high core retention rates demonstrated remedial plan perpetuated “the harmful effects of the City’s decades-long history of racial gerrymandering”). Given this Court’s amply supported conclusion that race predominated in the districts in the Enjoined Plan, neither the Commission nor this Court “can[] rely on core retention” when crafting a remedy. Op. at 110. Were it otherwise, the Commission “could immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan.” *Milligan*, 599 U.S. at 22 (refusing to disregard proposed

illustrative plans because they “naturally fare worse” than plans that prioritized core retention).

* * *

The *McClure* Remedial Plan fully remedies the Commission’s unconstitutional racial gerrymanders, comports with all applicable statutory and constitutional requirements, outperforms the Enjoined Plan on all legitimate nonracial traditional redistricting criteria, and meets the Commission’s alleged policy goals.

CONCLUSION

Plaintiffs respectfully request that this Court order the implementation of the *McClure* Remedial Plan for use in the 2026 elections and every election thereafter until a new plan is adopted after the 2030 census.

Respectfully submitted,

Dated: October 6, 2025

/s/ Kathryn Sadasivan

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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, on this 6th Day of October 2025.

By: /s/ Kathryn C. Sadasivan

Kathryn C. Sadasivan

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