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U.S. DISTRICT COURT
N.D. OF ALABAMA

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

CARA MCCLURE, et al.,

Plaintiffs,

v.

JEFFERSON COUNTY COMMISSION, et al.,

Defendants.

Civil Case No. 2:23-cv-00443-MHH

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***MCCLURE* PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

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INTRODUCTION

The *McClure* complaint rests on well-trodden principles of nondiscrimination. The complaint demonstrates that Defendants engaged in a redistricting process that was predominately motivated by race to pack Black voters into two supermajority Black districts in a manner that is not required by the Voting Rights Act, 52 U.S.C. § 10301. These allegations state a claim for unlawful racial gerrymandering in violation of the Equal Protection Clause of the Fourteenth Amendment as made applicable by 42 U.S.C. § 1983. *See Shaw v. Reno*, 509 U.S. 630, 648–49 (1993).

Further, Defendants do not dispute that the complaint alleges that members of the organizational Plaintiffs are registered voters in each of the five commission districts. Nor do Defendants dispute that the Commission itself is a defendant, and that an injunction against it on the § 1983 claim would provide complete relief, regardless of the presence or absence of other individual official capacity defendants.

For these reasons, and others, Defendants' motion to dismiss the *McClure* Plaintiffs' complaint pursuant to Rules 12(b)(1) and 12(b)(6) is meritless. The Court should deny their motion to dismiss the complaint.

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FACTUAL BACKGROUND

A. History of the Challenged Districts

Before 1985, the Jefferson County Commission was composed of three commissioners elected at-large. Compl., ECF No. 1 at ¶ 11.[1] No Black person was ever elected to the Commission under this election scheme. *Id.* at ¶ 12. In 1984, a federal lawsuit challenged the at-large election system under Section 2 of the Voting Rights Act of 1965 (VRA). Consent Decree, *Taylor v. Jefferson Cnty. Comm'n*, No. cv 84-c-1730-s (N.D. Ala. Aug. 17, 1985) ("*Taylor* Decree"), ECF. No. 1-1. At the time, Black residents of Jefferson County comprised about 33% of the total population. Compl., ECF No. 1 at ¶14; *see also* Letter from Edwin A. Strickland, Cnty. Att'y, Jefferson Cnty. Comm'n to Asst Att'y Gen., Civ. Rts. Div., Dep't of Just. (Nov. 18, 1985) ("County Letter"), ECF. No. 1-2 at 2.

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In 1985, the VRA lawsuit was settled by consent decree, *see generally Taylor* Decree, ECF No. 1-1, and the Commission expanded from three to five members, each elected from single-member districts. County Letter, ECF No. 1-2 at 2. The 1985 *Taylor* Decree established two majority-Black districts where Black voters would have an opportunity to elect candidates of choice to the Commission: District 1 had a Black population of 65.6%, and District 2 had a Black population of 66.8%

[1] Because of an error in numbering, the paragraph numbering of the Complaint starts over on p.7 of the Complaint. The vast majority of citations in this Memorandum of Law, such as this one, are to paragraph numbers starting after p.7 of the Complaint. When referencing a paragraph prior to p.7 we have used an *.

based on the 1980 census. Compl., ECF No. 1 at ¶ 14. The *Taylor* Decree does not require that the Black population percentages or the boundaries of the districts must remain unchanged, nor that Districts 1 and 2 must maintain Black supermajorities. *Id*.

Since their creation in 1986, Districts 1 and 2 have always elected Black commissioners. *Id.* at ¶ 19. In the last decade, Black candidates from these districts have won elections with over 65% of the vote. *Id.* In contrast, no Black commissioners have ever been elected from Districts 3, 4, or 5. *Id.* at ¶¶ 19-20.

In recent years, courts have continued to find discrimination and racial polarization in the county and its municipalities. *Id.* at ¶¶ 24-26, 29-33.

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B. 2021 Jefferson County Commission's Redistricting Process

The Commission began its redistricting process in October 2021, after the release of the 2020 Census data. Compl., ECF No. 1 at ¶ 35. The Commission worked with the Jefferson County Board of Registrars, including Chair Barry Stephenson and consultants Laura Foster and Laura Smith, to develop the proposed plans and Enacted Plan. *Id.* ¶ 36. On November 4, 2021, the Commission adopted a new map. *Id.* ¶¶ 50-57. The statements of the Commissioners and the details of the Enacted Plan reveal that racial considerations predominated in the mapmaking process. *Id*. ¶¶ 60-64, 72-89.

C. The Commission's Redistricting Criteria

On October 5, 2021, the Commission shared a PowerPoint presentation with the public that explained its redistricting criteria. Compl. ¶ 37. Citing *Reynolds v. Sims*, 377 U.S. 533 (1964), the presentation on redistricting stated that the Commission was bound by federal law to ensure near exact population equality among the districts, falling within plus or minus 1% population variance. *Id.*

Alabama law requires the governing body of each county to establish electoral districts composed of "contiguous, compact area[s] having clearly defined and clearly observable boundaries coinciding with visible features readily distinguishable on the ground such as designated highways, roads, streets, or rivers or be coterminous with a county boundary." Ala. Code § 17-6-2(b). Electoral districts should also conform to the most recent census tract and block map. Ala. Code § 17-6-2(a).

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D. 2020 Census Data

According to the U.S. Census, the population of Jefferson County increased by 2.2%, Compl., ECF No. 1 at ¶ 35, from 658,466 in 2010 to 674,721 in 2020. The Black population increased to comprise 43% of the population in 2020; the white population decreased from 52% of the county population in 2010 to 48% in 2020. *Id.* at ¶ 18. This table shows the 2020 Census population breakdowns by race:

	Black	White	Hispanic
Total Population (%)	42.91	48.06	5.17
Voting Age Population (%)	41.46	50.42	4.29

Compl., ECF No. 1 at ¶ 18.

E. The October 5, 2021 Work Session

The Commission first discussed redistricting publicly at a Pre-Commission Work Session on October 5, 2021. *Id.* at ¶ 38. All five Commissioners were in attendance. *Id.* During the Work Session, Board of Registrars Chair Barry Stephenson gave a presentation on redistricting. *Id.* at ¶ 39. The presentation included an overview of the redistricting process under state and federal law, the Commission's criteria, 2020 census data, and three potential redistricting plans. *Id.*

Board of Registrars Chair Stephenson stated that pursuant to Alabama law, the redistricting plans would be drawn and adopted by the Commission, not the Board of Registrars, County Managers, or County Attorneys. *Id.* at ¶ 40; *see* Ala. Code § 11-3-1.1(a). Chair Stephenson added that outside of their public meetings and work sessions, the Commissioners had viewed the three redistricting proposals and determined which parts of the county will be added to or removed from their respective districts. Compl., ECF No. 1 at ¶ 59.

The Commission's equal population target for each district, based on 2020 Census data, was 134,944, with a +/- 1% population variance. *Id.* at ¶ 41. Based on 2020 census data, the population of each district prior to redistricting was:

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	Population
District 1	122,689
District 2	121,372
District 3	142,776
District 4	142,111
District 5	145,773

Id. at ¶ 42. The population variance and population adjustments to achieve the target population in each district were:

	Population variance	Population adjustments to achieve target population
District 1	9.1% underpopulated	+ 12,255
District 2	10.1% underpopulated	+ 13,572
District 3	5.8% overpopulated	- 7,832
District 4	5.3% overpopulated	- 7,167
District 5	8.0% overpopulated	- 10,829

Id. at ¶¶ 43-44. According to the Commission, the population for each district under the three proposed plans would be:

	Plan 1	Plan 2	Plan 3
District 1	135,524	134,982	134,982
District 2	134,737	135,279	135,699
District 3	133,762	133,762	133,762
District 4	136,078	136,078	136,078
District 5	134,620	134,620	134,620

Id. at ¶ 45.

The 2021 registered Black voter percentage was 79.51% in CD 1, 70.88% in CD 2, 24.93% in CD 3, 26.09% in CD 4, and 10.09% in CD 5. *Id.* at ¶ 23.

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Commissioner Stephens stated that the proposed plans were "uncontroversial" and that the Commission should be able to decide in one month, by early November 2021. *Id.* at ¶ 47.

F. The November 4, 2021 Public Hearing & Adoption of the Enacted Plan

On November 4, 2021, the Commission held the only public hearing on the proposed redistricting plans. Commissioners spoke about the "racial implications" of moving certain neighborhoods into and out of districts. Compl., ECF No. 1 at ¶ 61. Commissioner Scales (CD1) said, "I heard about numbers and equity. . . Plan 1 actually gives District 1 787 more citizenry than it does for District 2. Plan 2 gives District 2 297 more than District 1. Plan 3 would give District 2 [717] more than District 1." *Id.* at ¶ 60.

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Her next words took a twist toward racial implications: "We speak of Democratic versus Republican. . . .You figure out what that looks like." *Id.* at ¶ 62. Commissioner Scales also indicated that Plan 1's over population of District 1 relative to District 2 had racial implications in that the neighborhoods included in District 2 under the Enacted Plan were not exclusively neighborhoods composed of Black people. *Id.* at ¶ 61.

The Commissioners could not have been looking at party registration when they were identifying which voters to add to their districts, but would have instead seen the race of voters in particular Census Blocks. The Alabama voter file does not

contain voter registration by party, because voters do not list or register by political party when registering to vote. *Id.* at ¶ 63.[2]

Ultimately, Commissioners Ammons, Knight, Tyson, and Stephens voted in favor of adopting Plan 1, while Commissioner Scales voted against it. Plan 1 thus became the Enacted Plan. *See id.* at ¶ 56. The Enacted plan had a population deviation of 1.73%, which exceeded the target of +/-1%. *Id.* at ¶¶ 37, 71.

The racial demographics under the Enacted Plan are:

	Black (%)	Hispanic (%)	White (%)
District 1	78.27	4.90	15.66
District 2	66.18	5.94	24.64
District 3	27.29	3.56	64.21
District 4	28.45	6.80	61.05
District 5	14.15	4.60	74.92

Id. at ¶ 23.

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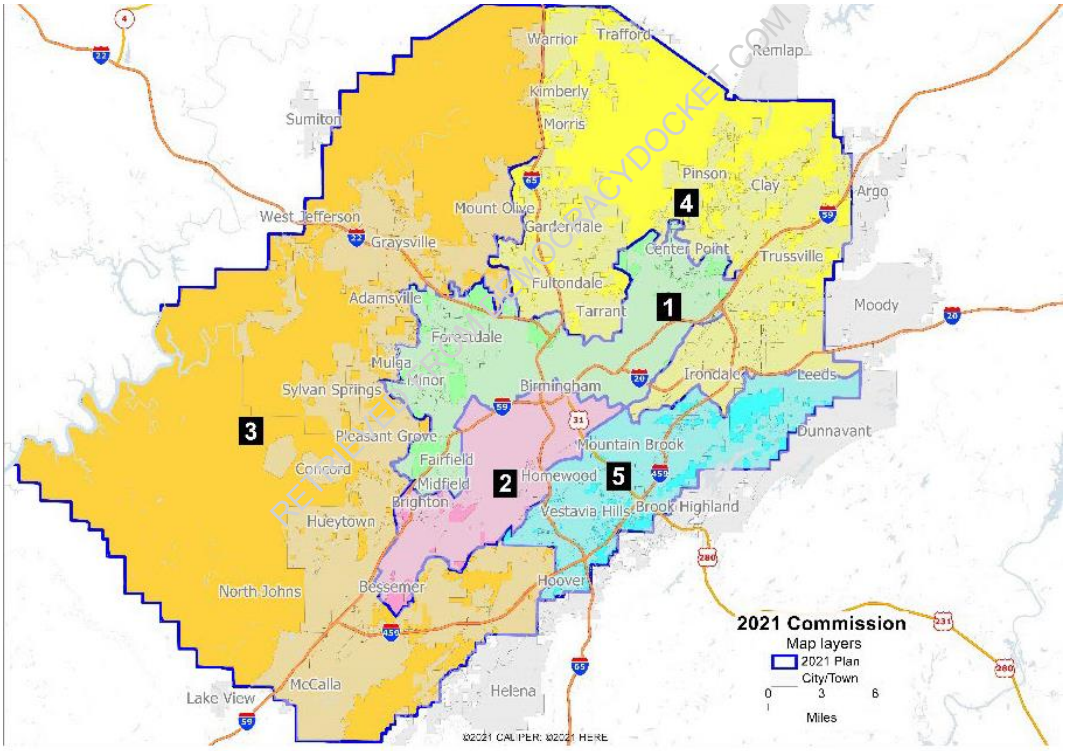
Of the voters moved into District 1, approximately 78% were Black and 16.11% were non-Hispanic white. Compl. ECF No. 1 at ¶ 83. About 41% of the individuals moved to District 2 were Black. *Id.* at ¶ 84. Nearly 88% of the voters moved into District 3 were white and 5% were Black. *Id.* at ¶ 86. In District 4, 81% of its new residents under the Enacted Plan were white. *Id.* at ¶ 88.

[2] Alabama keeps a "computerized statewide voter registration list" containing "the name and registration information of every legally registered voter in the state." Ala. Code § 17-4-33(a), (a)(9). This information includes "the name, address, . . . voting location," and "voting history of each registered voter." Ala. Code § 17-4-33(a)(2), (4). *See* ECF No. 1 at ¶¶ 63-64.

While no new residents were added to District 5, Black and white voters were largely moved into and among other districts on the basis of race. *See id.* at ¶ 89. Although District 4 was overpopulated based on the 2020 census, nearly 5,000 residents were added to District 4 from District 5: about 3,900 white residents and 400 Black residents. *Id.* Moving the white population from District 5 into District 4 allowed for the removal of roughly 1,400 Black residents from District 5 into District 2. *Id.*



G. The Challenged Districts

Under the Enacted Plan, the BVAPs of each district are 76.34% for District 1, 64.11% for District 2, 25.80% for District 3, 25.74% for District 4, and 13.99% for District. Compl., ECF No. 1 at ¶¶ 83-84, 86, 88-89. The BVAPs in the Enacted Plan

are similar to the BVAP data from the 2010 redistricting plan. Defendants admit that, in drawing the Enacted Plan, the Commission was intent on following existing district lines. *See* Defs.' Mot. Dismiss at 4–5, ECF No. 19 (all three proposals considered by the Commission "adhered to existing district lines").

STANDARD OF REVIEW

The Defendants challenge Plaintiffs' standing—and thus the Court's subject-matter jurisdiction—under Federal Rule of Civil Procedure 12(b)(1), and challenge Plaintiffs' racial gerrymandering claim as failing to state a claim for relief under Rule 12(b)(6).

To satisfy Rules 12(b)(1) and 12(b)(6), the "plaintiff need not put forth detailed factual allegations in support of the claim," and the complaint need only "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Greater Birmingham Ministries v. Merrill*, 250 F.Supp.3d 1238, 1243 (N.D. Ala. Apr. 6, 2017) (cleaned up). "In ruling on a 12(b)(6) motion, the Court accepts the factual allegations in the complaint as true and construes them in the light most favorable to the plaintiff." *Speaker v. U.S. Dep't of Health & Hum. Servs. Ctrs. for Disease Control & Prevention*, 623 F.3d 1371, 1379 (11th Cir. 2010).

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ARGUMENT

I. The Complaint Adequately States a Racial Gerrymandering Claim.

Racial gerrymandering claims involve a two-step inquiry. First, the allegations of the complaint must show that race was the predominant factor in placing "a significant number of voters within or without a particular district." *Cooper v. Harris*, 137 S. Ct. 1455, 1463–64 (2017) (citation omitted). Plaintiffs may rely on "'direct evidence' of legislative intent, 'circumstantial evidence of a district's shape and demographics,' or a mix of both." *Id.* 1464. Second, if race did predominate, strict scrutiny applies, and Defendants bear the burden of proving that the use of race was "narrowly tailored" to satisfy a "compelling interest," such as compliance with the VRA. *Id.*

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Neither race-conscious redistricting, nor the intentional creation of majority-minority districts *per se* trigger strict scrutiny. *See North Carolina v. Covington*, 138 S. Ct. 2548, 2554 (2018); *Bush v. Vera*, 517 U.S. 952, 958 (1996) (plurality); *accord Allen v. Milligan*, 143 S. Ct. 1487, 1512 n.7 (2023). Rather, race unlawfully predominates where a government "'subordinate[s] traditional race-neutral districting principles . . . to racial considerations.'" *Bethune-Hill v. Va. State Bd. of Elections*, 508 U.S. 178, 187 (2017). Race may predominate even where "other considerations may have played a role" in redistricting decisions. *Clark v. Putnam Cty.*, 293 F.3d 1261, 1270 (11th Cir. 2002). And Plaintiffs need only show that the

government's predominate motive is to "segregate voters on the basis of race," even if its motive was based on seemingly "benign" criteria. *See Shaw*, 509 U.S. at 653, 669.

Defendants cannot defend a racial gerrymander based on a mistaken interpretation of the VRA, *Cooper*, 137 S. Ct. at 1472, the desire to retain the cores of prior districts, *Covington*, 138 S. Ct. at 2551, or an attempt to protect incumbents, *Clark*, 293 F.3d at 1271–72. Moreover, the one-person-one-vote rule is not a factor in this analysis; it is a background rule against which redistricting takes place. *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 273 (2015) ("*ALBC*").

A. The Complaint Adequately Alleges Direct and Circumstantial Evidence that Race Predominated in the Enacted Plan's Design.

Statements from lawmakers who "expressly adopted and applied a policy of prioritizing mechanical racial targets" can offer direct evidence that "race motivated the drawing of particular lines." *ALBC*, 575 U.S. at 267; *see also Cooper*, 137 S. Ct. at 1468. In addition, "evidence concerning the shape and demographics" of the districts can provide sufficient circumstantial evidence that "the districts unconstitutionally sort voters on the basis of race." *Covington*, 138 S. Ct. at 2553.

Here, the Complaint alleges facts which, taken as true, establish that race predominated in the Commission's decision to place a significant number of Black

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voters within and without the districts created by the Enacted Plan, and that the packing and cracking of Black voters in these districts was not necessary to satisfy the VRA or any other compelling interest.

Specifically, the Complaint adequately alleges that the Commission deliberately sought to maintain CD1 and CD2 as packed majority-Black districts without narrowly tailoring the districts to comply with the VRA. Compl. ECF No. 1 ¶¶ 9, 58, 67. It is undisputed that, in 1984, the *Taylor* Decree resulted in five single-member districts for the Commission and created two districts with over 65% BVAP. Compl., ECF No. 1 at ¶ 13-14. Defendants admit that, in drawing the Enacted Plan, the Commission was intent on "adher[ing] to existing district lines." Defs.' Mot. to Dismiss at 54, ECF No. 19; *see also id.* at 25.

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At the time the *Taylor* Decree first established the two majority Black commission districts, it was widely believed that a threshold of 65% BVAP was necessary across-the-board to enable Black voters to elect candidates of their choice. *See, e.g., United Jewish Orgs. of Williamsburgh, Inc. v. Carey*, 430 U.S. 144, 164 (1977); *Smith v. Clinton*, 687 F. Supp. 1361, 1362-63 (E.D. Ark.) (three-judge court), *aff'd mem.*, 488 U.S. 988 (1988). But, since then, for over three decades, the VRA has been interpreted *not* to require the maintenance of specific BVAPs. *See, e.g., Vera*, 517 U.S. at 983 (plurality); *Shaw*, 509 U. S. at 655. Rather, after each census, the Commission is under the obligation to conduct a "functional analysis" of

the BVAP needed to prevent a VRA violation—that is, Defendants could not lawfully assume that a 65% threshold is *per se* necessary. *See ALBC*, 575 U.S. at 275–76.

In setting out to adhere to the core of the districts devised in the *Taylor* Decree, Defendants' "central focus" in the 2021 redistricting was "shifting Black voters around to maintain supermajority-minority districts." Compl., ECF No. 1, at ¶ 58. This is direct evidence of racial predominance. *See Clark*, 293 F.3d at 1267 (finding that a mapmaker's goal of "maintain[ing] the core of the existing majority minority districts," which were first devised to remedy a VRA claim, was direct evidence of racial gerrymandering); *see also Covington*, 138 S. Ct. at 2551 (enjoining districts that "retain[ed] the core shape" of previously racially gerrymandered districts, because the redrawn districts continued to bear the hallmarks of racial predominance). In the absence of a compelling interest, an unmoored intent "to maintain the race-based lines created in the previous redistricting cycle" is "not a legitimate objective." *Jacksonville Branch of the NAACP v. Jacksonville*, 2022 WL 16754389, at *3 (11th Cir. Nov. 7, 2022); *see also Clark*, 293 F.3d at 1267; *Grace, Inc. v. City of Miami*, No. 1:22-cv-24066-KMM , 2023 WL 4853635, at *2–3 (S.D. Fla. July 30, 2023) (finding of racial gerrymandering was buttressed where the city's 'intent was, as expressed, to preserve previously-drawn race-based lines of the

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Commission Districts in the 2022 redistricting process.'") (citation omitted).[3] It is no defense that previous Jefferson County redistricting plans also included two super-majority Black districts. *See Covington*, 138 S. Ct. at 2551; *Jacksonville Branch of the NAACP*, 2022 WL 16754389, at *3.

With respect to other direct evidence of racial predominance, Commissioners also spoke in explicitly racial terms about their desire to split cities, towns and precincts to maintain the Black voting age population of their respective districts. *See* Factual Background, *supra*, at 8.

Moreover, the Commissioners could not have been looking at party registration when they identified which voters to add to Districts 1 and 2. Instead, the registered voter data that the Commission relied upon to draw the Enacted Plan showed only the race of voters in particular Census Blocks, not their party registration. Compl. ¶ 63. *See, e.g.*, *Vera*, 517 U.S. at 961–62 (concluding that government map drawers' access to racial demographics of voters, and lack of access to partisan affiliation, supported a finding of racial predominance).

With respect to circumstantial evidence, the Complaint alleges that the "shape and demographics" of the districts also show that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within

[3] *Cf. Allen v. Milligan*, 143 S. Ct. 1487, 1505 (2023) (concluding that a State's adherence to the core of previous plans is not a defense to a VRA claim).

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or without a particular district." *Miller v. Johnson*, 515 U.S. 900, 916 (1995). For example, in drawing the Enacted Plan, traditional redistricting principles—compactness, contiguity, and maintaining precincts, cities, towns, municipalities, or communities of interest—were all secondary to the Commission's consideration of race. Compl., ECF No. 1, ¶¶ 75-89. Without the predominate use of race, a different plan premised on traditional redistricting criteria would more naturally place additional Black voters in Districts 3, 4, and 5 instead. *Id*. ¶¶ 85-89.

The Enacted Plan allows Districts 1 and 2 to cover Black populations in central Brimingham and reaches out to other municipalities to capture more distant Black neighborhoods. *Id*. at ¶ 76. District 1 stretches from Midfield up to Adamsville, carving out Black neighborhoods from District 3, before the District stretches back through central Birmingham and heads north to carve out Black populations in Center Point. *Id.* at ¶ 77. District 2 stretches from Bessemer through parts of Homewood, grabbing the portions of Oxmoor and Rosedale with large Black populations. *Id.* at ¶ 78. Districts 3 and 4 wrap around, in snakelike form, Districts 1 and 2. *Id.* at ¶ 79. District 4 reaches down to capture parts of Irondale, snakes back up to Pinson, and then back down through Fultondale to Tarrant. *Id.* District 3 snakes from Mount Olive and West Jefferson down to capture parts of Hueytown before heading back up again to capture portions of Hoover. *Id.*

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The challenged districts are also noncompact—noted by their lack of smooth borders. *See id.* at ¶¶ 80-81 (measuring Polsby-Popper compactness score of each district on a scale of 0 to 1, with 1 being most compact and 0 being, and explaining each district has very low compactness scores ranging from 0.12-0.23).

The Enacted Plan divides precincts, towns, municipalities, and neighborhoods across all districts on the basis of race. The City of Irondale, for example, is split among three districts, all on racial lines, with its Black neighborhoods placed in District 1 and its white population siphoned into Districts 4 and 5. *Id.* at ¶ 83. Similarly, Center Point is divided along racial lines between Districts 1 and 4. *Id.* Certain Black neighborhoods from Districts 3 and 5 were selected for inclusion in District 2 under the Enacted Plan. *Id.* at ¶ 84.

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In sum, the Complaint adequately alleges that the Commission deliberately sought to maintain Districts 1 and 2 as packed, supermajority-Black districts, and in doing so created oddly-shaped districts, divided towns, municipalities, and voting precincts, and otherwise departed from traditional redistricting principles in order to accomplish this goal. These allegations, if proven, are sufficient to establish that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district," *Cooper*, 137 S. Ct. at 1463 (quoting *Miller*, 515 U.S. at 916), in violation of the Fourteenth Amendment.

B. The Complaint Adequately Alleges that the Commission Districts Are Not Narrowly Tailored to Satisfy a Compelling State Interest

Because Plaintiffs have adequately alleged that race predominated in the challenged districts, strict scrutiny applies, and Defendants will bear the burden of proving that the racial predominance was narrowly tailored to serve a compelling interest. *Cooper*, 137 S. Ct. at 1464. "[O]ne compelling interest is complying with operative provisions of the [VRA]." *Id.* There is a "significant state interest in eradicating the effects of past racial discrimination." *Shaw*, 509 U.S. at 656; *accord Milligan*, 143 S. Ct. at 1516–17 (acknowledging that courts may "authorize[] race-based redistricting as a remedy for state districting maps that violate § 2").

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But "race-based" districting is "narrowly tailored" to advance the VRA only when the jurisdiction has "good reasons" for drawing the *specific* majority-Black districts at issue. *ALBC*, 575 U.S. at 278. A jurisdiction will have "good reasons" if it conducts a "pre-enactment analysis with justifiable conclusions" of what the VRA demands *before* placing a significant number of minorities into a district. *Abbott v. Perez*, 138 S. Ct. 2305, 2335 (2018). The VRA does not require "maintaining the same population percentages in majority-minority districts as in the prior plan." *ALBC*, 575 U.S. at 276. Rather, "[d]etermining what minority population percentage

will satisfy" the VRA requires a "functional analysis of the electoral behavior within the particular election district." *Bethune-Hill*, 580 U.S. at 194 (citation omitted).[4]

Here, the Complaint alleges that the Commission did not conduct an analysis of racially polarized voting in each district, and that the Commission was not seeking to comply with the VRA at all. Compl., ECF No. 1 ¶¶ *9, 94. The Commission did not conduct a "functional analysis" of racially polarized voting in any of the Commission districts, nor otherwise inquire into whether the VRA required supermajorities of Black voters in Districts 1 and 2. *Id*. ¶ *9. "Indeed, Commissioners made no mention of compliance with the VRA during the redistricting process." *Id*.

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Although the Commission did not attempt to determine how Districts 1 and 2 might function with BVAPs closer to 50%, a racial polarization analysis of Jefferson County "would have made clear" that supermajority Black districts are unnecessary

[4]Attempting to avoid this conclusion, Defendants suggest in passing that it is somehow too late for Plaintiffs to challenge the racial gerrymandering in the Enacted Plan, because Plaintiffs could have filed a lawsuit against the previous 2010 plan if they believed the districts were excessively race-based. Defs.' Mot. Dismiss at 27, ECF No. 19. This argument misunderstands the governing law. Each decade's redistricting plan requires the county to assess whether it has "good reason" to maintain the core of racially gerrymandered districts. *ALBC*, 575 U.S. at 278; *see also id*. at 274–75 (remanding for consideration of challenges to the "core" of districts first established in a 1993 settlement, but only challenged after the 2010 census). The Commission's decennial redistricting is subject to a racial gerrymandering challenge – regardless of whether the "cores" of the districts might have gone unchallenged in the past. *Cf. Bethune-Hill*, 580 U.S. at 194 ("[d]etermining what minority population percentage will satisfy" the VRA requires a "functional analysis of the electoral behavior within the particular election district") (cleaned up); *Clark*, 293 F. 2d at 1264 (finding a redistricting plan unconstitutional because it retained the cores of racially gerrymandered districts enacted two decades earlier).

for Black-preferred candidates to win in CD1 and CD2. *Id*. As the complaint alleges, it is public knowledge that Black and Black-preferred candidates have successfully won election at-large in Jefferson County. *Id*. at ¶¶ 96-99. Accordingly, plaintiffs have adequately pled facts showing that Defendants' racially gerrymandered plan cannot survive strict scrutiny.

C. The Complaint Fully Alleges A Racial Gerrymandering Claim, Not the Intentional Vote Dilution Claim Attacked by Defendants.

In the face of the well-pleaded facts establishing a clear cause of action for unlawful racial gerrymandering, Defendants can do nothing but go to battle against a claim Plaintiffs have *not* made -- namely, a claim of intentional vote dilution. Defendants contend that "Plaintiffs' tabulation of voters moved in and out of districts for purposes of restoring population equality [are not] sufficient to state a claim that the Commission redistricted *because of* race." Defs.' Mot. Dismiss at 23 (emphasis in original). This argument is unavailing. Plaintiffs here are making a claim of unlawful racial gerrymandering – not a claim of intentional vote dilution. Racial gerrymandering claims are "analytically distinct" from vote-dilution claims and require a "different analysis." *Shaw*, 509 U.S. at 650, 652. Plaintiffs' racial-gerrymandering claim alleges that race predominated in the drawing of the Enacted Plan "regardless of the motivations" for the use of race. *Id*. at 645. The basis of a racial gerrymandering claim is that "race was improperly used in the drawing of the

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boundaries of one or more specific electoral districts" by "separating voters into different districts on the basis of race." *ALBC*, 575 U.S. at 263 (cleaned up). Plaintiffs have *not* made an intentional racial vote-dilution claim – that is, Plaintiffs have not alleged that the Commission intentionally sought "to minimize or cancel out the voting potential of racial or ethnic minorities." *Miller*, 515 U.S. at 911 (citation omitted); *see White v. Regester*, 412 U.S. 755, 765 (1973) (intentional vote dilution occurs when a districting plan seeks to "cancel out or minimize the voting strength of racial groups"). Accordingly, the dispositive question is not whether the Commission redistricted because of an intent to dilute the vote of Black citizens, but whether "regardless of the reason, race was the predominant factor driving the design of the [c]hallenged [d]istricts." *Jacksonville Branch of the NAACP*, 2022 WL 7089087, at *37. Plaintiffs' well-pleaded factual allegations more than suffice to establish that race predominated in the drawing of the Enacted Plan.

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II. The Complaint Adequately Alleges Plaintiffs' Standing.

An organization establishes associational standing when: "a) its members would otherwise have [the] standing to sue in their own right; b) the interest[] it seeks to protect are germane to the organization's purpose;[] c) neither the claim asserted, nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). "Where, as here, an organization has identified members and represents them in

good faith, our cases do not require further scrutiny into how the organization operates." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2158 (2023). And if one plaintiff "has demonstrated standing to assert these rights as his own," the court "need not consider whether the other individual and corporate plaintiffs have standing to maintain the suit." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264 & n.9 (1977).

At the outset, Defendants concede in a footnote that the organizational Plaintiffs are likely to prove associational standing with evidence that members live in the challenged districts. Defs.' Mot. Dismiss at 15 n.6; *see ALBC*, 575 U.S. at 270–71. Even without this concession, the Complaint alleges that members of the NAACP and GBM are registered voters who reside in each of the challenged districts and that the NAACP and GBM's missions are to remedy discrimination. Compl. ¶¶ 14*, 17*,19*. This is sufficient to survive a motion to dismiss. *See, e.g.*, *Ala. State Conf. of NAACP v. City of Pleasant Grove*, 372 F. Supp. 3d 1333, 1337–38 (N.D. Ala. 2019) (finding that the Alabama NAACP adequately alleged standing without naming specific members in the complaint). And there is no need to publicly name members at this stage. *Cf. NAACP v. Alabama ex rel. Patterson*, 357 US 449, 460 (1958).

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Because Defendants' concession resolves Plaintiffs' standing to challenge each district, it is unnecessary for the Court to examine "diversion-of-resources"

standing.[5] *See Greater Birmingham Ministries v. Sec'y of State*, 992 F. 3d 1299, 1317 (11th Cir. 2021) (holding that where organizational plaintiffs satisfy associational standing, it is unnecessary to analyze the standing of other plaintiffs).

III. Plaintiffs' Injuries are Redressable by Defendants.

A. The County Commission and Individual Commissioners are Proper Defendants.

In their motion to dismiss, Defendants allege Plaintiffs lack standing because the named individual Commissioners do not administer elections and, therefore, an injunction against them cannot remedy the harm from the Enacted Plan's racial gerrymander.

This is incorrect. First, the Commissioners were sued in their official capacity for their roles as election administrators. Plaintiffs' challenge is to the Commissioners' implementation and application of the racially gerrymandered map. Compl., ECF No. 1 at ¶¶ 20, 34. Defendants suggest the only proper defendants are those county officials who administer elections, such as the probate judge. Defs.' Mot. Dismiss at 17, ECF No. 19. However, the Commissioners share many election administration responsibilities with the probate judge. The Commission is

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[5] Although evidence outside the pleadings is not necessary to withstand a motion to dismiss, it bears noting that the declarations submitted by representatives of two of the organizations establish that each has specific members residing in each of the five Commission districts. *See* Declaration of Scott Douglas, Executive Director, Greater Birmingham Ministries, ECF No. 26-9; Declaration of Dorothea Crosby, President, Metro-Birmingham Branch of the NAACP, ECF No. 26-11; *see ALBC*, 575 U.S. at 269-70 (holding that declarations from organizational leaders identifying affected members are sufficient to confer associational standing).

"responsible for creating election precincts, determining poll locations, securing election machines, and providing adequate funding for elections," appointing poll workers, and appointing the chair of the Board of Registrars. *People First of Ala. v. Merrill*, 491 F. Supp. 3d 1076, 1122 (N.D. Ala 2020); *see, e.g.*, Ala. Code § 17-4-1; Ala. Code § 17-6-2(a)-(b); Ala. Code § 17-6-4(a); Ala. Code § 17-8-1; Ala. Code § 17-11-2; Ala. Code § 17-16-1; Ala. Code § 17-16-90; Ala. Code § 45-37-110.

Under the redressability prong for standing, courts "ask whether a decision in a plaintiff's favor would 'significant[ly] increase . . . the likelihood' that she 'would obtain relief that directly redresses the injury' that she claims to have suffered." *Lewis v. Governor of Ala.*, 944 F.3d 1287, 1301 (11th Cir. 2019) (citing *Harrell v. Fla. Bar*, 608 F.3d 1241, 1260 n.7 (11th Cir. 2010)). Here, an injunction prohibiting the commissioners from administering the Enacted Plan, and requiring them instead to administer future elections under a lawful redistricting plan would redress Plaintiffs' injuries. It would therefore greatly increase, if not ensure, the likelihood that Plaintiffs will obtain the relief they seek. *See Clark*, 293 F.3d at 1278–79 (enjoining county commissioners from conducting elections using illegal racially gerrymandered districts); *Jones v. Jefferson Cnty. Bd. of Educ.*, No. 2:19-cv-01821-MHH, 2019 WL 7500528, at *1–2 (N.D. Ala. Dec. 16, 2019) (enjoining the county school board and its members from enforcing an unconstitutional voting system).

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Second, even accepting the incorrect assertion that individual Commissioners sued in their official capacity are not proper defendants, the Commission itself is also a Defendant. *See Leatherman v. Tarrant Cnty. Narcotics Intel. & Coordination Unit*, 507 US 163, 166–67 (1993) (holding that counties and municipalities have no immunity from § 1983 lawsuits). And an injunction against the Commission prohibiting it from conducting elections under the Enacted Plan would also fully remedy the harm suffered by Plaintiffs. *See Clark*, 293 F.3d at 1278–79 (enjoining a county); *Jacksonville Branch of the NAACP*, 2022 WL 7089087, at *54 (city).

B. Additional Defendants are Not Necessary for Complete Relief.

Defendants do not argue that the County probate judge, circuit clerk, and sheriff are necessary parties, FRCP 19, whose absence could require Plaintiffs' claim to be dismissed under a 12(b)(7) motion. Instead, their 12(b)(1) motion asserts that those responsible for election administration must be sued and imply that the probate judge, circuit clerk, and sheriff should be added. However, none of these county officials is indispensable for the relief sought.

Because the probate judge, circuit clerk, and sheriff share election administration duties with the Commission and individual commissioners, the relief requested can be obtained by suing Defendants alone. *Merrill*, 491 F.Supp.3d at 1136. It is not necessary to sue everyone and anyone who has some election duties – otherwise, Defendants' logic could require the addition of an unlimited number of

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defendants—such as poll workers appointed by the circuit clerk, Ala. Code §§ 17-1-2(1), 17-8-1(4), or other officials deputized by the sheriff, Ala. Code § 17-9-1. It is more than sufficient that Plaintiffs have sued the Commission and the individual Commissioners. *Cf. Pleasant Grove*, 372 F. Supp. 3d at 1337–38 (dropping official capacity defendants as duplicative and retaining only a city as a § 1983 defendant).

CONCLUSION

For the foregoing reasons, the Court should deny Defendants' Motion to Dismiss.

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Respectfully submitted,

/s/ Brenda Wright
Brenda Wright*
Brittany Carter*
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, NY 10006
(212) 965-2200
bwright@naacpldf.org
bcarter@naacpldf.org

Deuel Ross*
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
700 14th Street N.W. Ste. 600
Washington, DC 20005
(202) 682-1300
dross@naacpldf.org

DATED this 2nd day of August, 2023

/s/ Sidney M. Jackson
Sidney M. Jackson (ASB-1462-K40W)
Nicki Lawsen (ASB-2602-C00K)
WIGGINS CHILDS PANTAZIS FISHER & GOLDFARB, LLC
301 19th Street North
Birmingham, AL 35203
Phone: (205) 341-0498
sjackson@wigginschilds.com
nlawsen@wigginschilds.com

Attorneys for McClure Plaintiffs

**Admitted Pro Hac Vice*

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 2nd day of August 2023.

/s/ Brenda Wright
Brenda Wright
COUNSEL FOR PLAINTIFFS

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