

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

CARA MCCLURE, et al.,

Plaintiffs,

v.

JEFFERSON COUNTY
COMMISSION,

Defendant,

ALEXIA ADDOH-KONDI, et al.,

Plaintiffs,

v.

JEFFERSON COUNTY
COMMISSION,

Defendant.

No. 2:23-cv-00443-MHH

(ORAL ARGUMENT REQUESTED)

No. 2:23-cv-00503-MHH

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION¹

Plaintiffs in racial gerrymandering cases must prove that redistricting was infected with “racial purpose,” *Miller v. Johnson*, 515 U.S. 900, 913 (1995), meaning lawmakers made race the criterion that “could not be compromised,” *Shaw v. Hunt*, 517 U.S. 899, 907 (1996) (*Shaw II*). A racial gerrymander occurs when district lines are “unexplainable” except by race. *Easley v. Cromartie*, 532 U.S. 234, 242 (2001) (*Cromartie II*). It does not occur every time a plaintiff contests a district as too “heavily ... minority,” *id.* at 249, or disagrees with the wisdom of lawmakers’ prioritization of certain nonracial redistricting criteria over others, *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017). If there remains a “possibility” that non-racial criteria explain district lines, then that “possibility is dispositive.” *Alexander v. S.C. State Conf. of NAACP*, 144 S. Ct. 1221, 1241 (2024). The presumption of legislative good faith precludes a finding of racial gerrymandering. *Id.*

Applied here, Plaintiffs have not presented a genuine issue of material fact that any Jefferson County Commission district is “unexplainable on grounds other than race.” *Id.* at 1248. Instead, Plaintiffs have pursued an erroneous legal theory: that even if lawmakers do “not even use race” in redistricting, “race can predominate.” Doc. 90-29 at 15:10-11 (Fairfax). Meaning, lawmakers can “accidentally”

¹ All docket numbers refer to *McClure v. Jefferson County Commission*, No. 2:23-cv-443-MHH, unless otherwise noted.

gerrymander. *Id.* 15:19. Accordingly, Plaintiffs’ experts have targeted the “racial consequences” or “effect” or “results” or “disproportionate impact” of redistricting while ignoring nonracial explanations for district lines.² Plaintiffs have it backwards. When a district’s racial makeup is “simply a side effect of” nonracial redistricting criteria, race does not predominate. *Alexander*, 144 S. Ct. at 1241. Without evidence supporting Plaintiffs’ racial-gerrymandering claims, summary judgment for the Commission is appropriate.

BACKGROUND

Plaintiffs in these consolidated cases challenge the Jefferson County Commission’s 2021 Enacted Plan as a racial gerrymander. While the parties dispute the relevant legal framework, the material facts are undisputed.

A. The Commission redistricted in 2021. The public legislative record for the redistricting process includes the Enacted Plan, Doc. 34, undisputed U.S. Census data, a redistricting presentation given twice by Chairman of the Jefferson County Board of Registrars Barry Stephenson, Doc. 31-2, a recorded October 2021 working meeting, Doc. 27-2, and a recorded November 2021 public hearing, Doc. 27-1.

² *E.g.*, Doc. 90-29 at 55:23-56:5 (Fairfax) (“results”); *id.* 97:9-11 (“race predominant aspect can occur regardless of whether the person intentionally did it or not”); *id.* 143:14-16 (“It’s the results that occur”); Doc. 90-56 at 51:10-15 (Williamson) (“disproportionate impact”); *id.* 213:20-23 (describing analysis as “agnostic towards motivation” and focused on “racial consequences”); *id.* 155:3-4 (“I don’t speak to causation.”); Doc. 89-12 at 5 (Liu) (faulting district for “too many” Black voters).

The 2020 Census revealed that Districts 1 and 2 were underpopulated, meaning they would need to add precincts during redistricting, and that Districts 3, 4, and 5 were overpopulated, meaning they would need to shed precincts. Doc. 27-1 at 29:3-24. In making those changes, the Commission had an undisputed population goal—minimizing population differences between the districts and bringing each within 1% of the 134,944-person “ideal” population. Doc. 31-2, at 4, 11. The Commission also indisputably prioritized “core retention”—every redistricting proposal made minimal changes to each incumbent Commissioners’ existing district lines. *See Alexander*, 144 S. Ct. at 1245 (“Lawmakers do not typically start with a blank slate.”).³

The Commission adopted the Enacted Plan by a 4-1 vote on November 4, 2021, after a public hearing. Doc. 27-2 at 35:11-21; Doc. 31, at 5 ¶18. Nobody at the hearing objected to the plan as a racial gerrymander. *See* Doc. 31, at 4 ¶17. No Plaintiff participated at the hearing or objected to the Enacted Plan at the time.⁴

³ Doc. 27-1 at 33:24-36:17; Doc. 27-2 at 35:21-36:9; Doc. 89-7 at ¶43 (Fairfax) (“[T]he drafters of the Adopted 2021 Plan decided to select a least change approach for plan development.”); Doc. 90-29 at 61:6-11 (Fairfax); Doc. 90-14 at 98:7-12 (Cooper) (acknowledging that the Enacted Plan had high core retention); Doc. 90-49 at 72:10-15 (McCartan) (same); *see* Doc. 31-2, at 15-17 (showing different proposals); Doc. 31 at ¶¶14-15 (Stephenson) (describing minimal changes in different proposals).

⁴ *See* Doc. 88-2 at 52:15-22 (Brown); Doc. 88-14 at 51:13-18 (Walker); Doc. 88-1 at 33:10-13 (Addoh-Kondi); Doc. 88-3 at 58:10-59:15 (Crosby); Doc. 88-5 at 39:22-40:1 (Hall); Doc. 88-7 at 42:16-20 (Juarez); Doc. 88-9 at 18:3-7 (McClure); Doc. 88-10 at 49:6-22 (Muhammad); Doc. 88-11 at 87:12-14 (Randall); Doc. 88-12 at 72:20-23 (Simelton); Doc. 88-13 at 52:16-53:7 (Smith).

B. The Enacted Plan retained 90% or more of each existing district while bringing each district within 1% of the ideal district population.⁵ Overall, 95.3% of Jefferson County residents remained in their same district. Doc. 89-14 at ¶36 (McCartan). Districts 1 and 2 continue to cover nearly all of Birmingham; Districts 3, 4, and 5 continue to cover the western, northeastern, and southeastern portions of the County respectively. *See* Doc. 89-1 at 9, tbl. 3 (Barber) (reporting 43% of Birmingham is in District 1 and 51% of Birmingham is in District 2). A comparison of the Enacted Plan and the 2013 Plan (Doc. 31-1) is attached as Appendix A.

C. Seventeen months after redistricting, two sets of Plaintiffs sued, alleging all five districts were racially gerrymandered.⁶ Plaintiffs later moved for a preliminary injunction. As part of preliminary-injunction proceedings, Plaintiffs deposed Mr. Stephenson. Doc. 47. Mr. Stephenson also submitted a declaration and materials from the redistricting process. Doc. 31, 31-1, 31-2, 31-3.

The parties conducted additional discovery after the Court denied Plaintiffs' preliminary-injunction motion and Defendant's motion to dismiss in part. The parties agreed to treat portions of Mr. Stephenson's deposition as 30(b)(6) testimony for the County. The parties deposed Michael Miller, Chief of Staff to Commissioner Sheila Tyson, and all plaintiffs, except one due to illness.

⁵ Doc. 89-1 at 7, tbls. 1 & 2 (Barber); Doc. 89-8 at 105 (Fairfax).

⁶ *See generally* McClure Doc. 1; Addoh-Kondi Doc. 1; *see also* Addoh-Kondi Doc. 1, ¶10 (stating "cause of action is *not* a claim of intentional discrimination").

The parties also exchanged expert reports and deposed all experts. Plaintiffs relied on the following five experts:

- **Bill Cooper (McClure Plaintiffs)** described himself as a “demographic and redistricting expert.” Doc. 89-5 at ¶1. His reports advanced five “illustrative” plans while acknowledging that no illustrative plan matched both the Enacted Plan’s population deviation and core retention.⁷
- **Baodong Liu (McClure Plaintiffs)** is a political scientist who conducted a “racially polarized voting” analysis and “effectiveness” analysis.⁸ He agreed such analysis is for cases arising under Section 2 of the Voting Rights Act and that there is no Section 2 claim in this case.⁹ Dr. Liu also conducted a regression analysis for District 1 to assess what precincts were more or less likely to be moved into District 1. He agreed that a precinct’s adjacency to the existing District 1 line was the strongest predictor of precincts moved into District 1. Doc. 90-43 at 82:5-9. He opined that race was also a statistically significant predictor of which precincts were moved into that district while admitting that his regression looked at race alone and did not control for other differences between adjacent precincts that could have affected their inclusion (*e.g.*, varying population sizes of precincts). *Id.* 89:15-20, 91:2-12. In Jefferson County, precincts vary from hundreds of people to thousands of people. *See, e.g.*, Doc. 90-64 (Williamson) (showing 3,808-person precinct next to 355-person precinct). Dr. Liu did not perform that regression analysis for any other district. Doc. 90-43 at 90:2-18, 115:3-5.
- **Ryan Williamson (McClure Plaintiffs)** is a political scientist who compared averaged racial demographics of precincts that stayed in the same districts between 2013 and 2021 and those that changed.¹⁰ His analysis did not account for population differences between precincts, municipal lines, or differences

⁷ *See generally* Doc. 89-4; Doc. 89-5; Doc. 89-6; *see also* Doc. 90-14 at 167:19-25, 106:12-18, 166:19-24.

⁸ *See* Doc. 89-12 at 3-8; Doc. 89-11; Doc. 89-13.

⁹ *See* Doc. 89-12 at 2; Doc. 90-43 at 34:9-13; 37:11-16; *see also* Doc. 90-49 at 49:3-10, 64:14-18 (McCartan) (explaining that a racially polarized voting analysis is used in VRA cases).

¹⁰ Doc. 89-15 (Williamson); Doc. 89-16 (Williamson).

in racial demographics in different parts of the County.¹¹ His testified that he did not consider alternative explanations for district lines:

Q. You didn't analyze whether the districts are explainable for reasons other than race; right?

A. Correct. My analysis was exclusively limited to race.

Doc. 90-56 at 102:25-103:4.

- **Cory McCartan (McClure Plaintiffs)** served a rebuttal report analyzing hundreds of thousands of computer-drawn redistricting plans (or “simulations”). Most relevant here, Dr. McCartan generated 120,000 race-neutral simulations prioritizing core retention and population equality similar to the Enacted Plan (hereafter, “Simulation Set 5”). Doc. 89-14 at ¶¶35-36. According to his own analysis, the districts that Plaintiffs challenge as “packed” resemble more than 10,000 race-neutral simulations. *Id.* ¶45 tbl. 2 (reporting District 1 BVAP < 10% of race-neutral simulations, while BVAP of District 2 < 50%). Separately, Dr. McCartan created a new metric, the “combined packing-cracking score,” to compare plans by averaging and subtracting BVAPs of districts from one another; he acknowledged that metric is not one featured in any peer-reviewed journal or used by others. Doc. 90-49 at 42:17-43:10.
- **Anthony Fairfax (Addoh-Kendi Plaintiffs)** is a demographer who opined on changes to the Enacted Plan.¹² He concluded race predominated but then testified that race could predominate “accidentally” even if lawmakers prioritized nonracial redistricting criteria. *Id.* 15:6-13.¹³ Mr. Fairfax also proposed one illustrative plan, which prioritized keeping municipalities whole. Doc. 89-7 at ¶93. He testified that his plan did not prioritize core retention as the Commission did. Doc. 90-29 at 181:8-11.

The Commission relied on **Michael Barber**, an expert in quantitative and statistical analyses in redistricting. Doc. 89-1 at 3. Dr. Barber analyzed the Enacted

¹¹ See, e.g., Doc. 90-56 at 117:22-118:21, 159:19-160:3, 195:6-13, 201:15-24, 231:8-20, 234:6-17, 235:21-236:7.

¹² See Doc. 89-7; Doc. 89-8; Doc. 89-9; Doc. 89-10.

¹³ See also Doc. 90-29 at 15:19, 97:9-11 (“[T]his race predominant aspect can occur regardless of whether the person intentionally did it or not.”).

Plan district-by-district and showed Plaintiffs’ failure to account for race-neutral explanations for the changes. *Id.* at 4-39.¹⁴ He showed that a precinct’s adjacency to existing district lines, not race, was the strongest predictor of which precincts were moved in or out of districts. *Id.* at 20, 29, 33-34, 38. He showed how changes followed municipal boundaries or roadways. *E.g., id.* at 14, 17, 26, 33. And he showed how the racial demographics of the existing districts were within the range of tens of thousands of computer-simulated districts, even without prioritizing core retention as the Enacted Plan did. *Id.* 51.

In response to Dr. McCartan’s rebuttal simulations and other late disclosures by Plaintiffs, Dr. Barber produced two short supplemental reports.¹⁵ His first supplemental report showed that the Enacted Plan resembled the 120,000 computer-drawn simulations in Dr. McCartan’s Simulation Set 5. Doc. 89-2 at 4, fig. 1. His second supplemental report identified additional errors in Dr. Williamson’s analysis that, when corrected, undermined Plaintiffs’ claims. Doc. 89-3 at 2-3.

D. After the Court denied Defendant’s motion to dismiss in part, the Supreme Court decided *Alexander v. South Carolina State Conference of the NAACP*, 144 S.

¹⁴ Doc. 90-1 at 26:11-15 (Barber) (“I was asked to respond to the work and analysis that had been provided by the plaintiffs’ experts....”); 32:23-33:3 (seeking “to show what potential explanations are more or less consistent with the choices that were made.”).

¹⁵ See Doc. 89-2 (Barber); Doc. 89-3 (Barber). Mr. Cooper disclosed his rebuttal report late. Doc. 90-14 at 26:24-27:5, 29:5-16 (Cooper). Dr. Williamson disclosed rebuttal reliance materials late. Doc. 90-56 at 167:21-24, 242:16-243:8 (Williamson).

Ct. 1221. The Supreme Court reaffirmed that racial gerrymandering occurs when lawmakers “give[] race a predominant role in redistricting decisions.” *Id.* at 1233. It is not enough for “race” to be “highly correlated” with a nonracial redistricting criteria, *id.*, or “simply a side effect” of lawmakers’ nonracial priorities, *id.* at 1241.

ARGUMENT

Summary judgment is appropriate when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Rule 56 “mandates the entry of summary judgment” when “there is an absence of evidence” for an element essential to Plaintiffs’ case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 325 (1986). Although evidence should be viewed in the light most favorable to Plaintiffs, “circumstantial evidence has no probative value against positive and uncontradicted evidence.” *Bald Mountain Park, Ltd. v. Oliver*, 863 F.2d 1560, 1562, 1564 (11th Cir. 1989). When “evidence is merely colorable” or “not significantly probative,” Plaintiffs lose. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *see also Ellis v. England*, 432 F.3d 1321, 1327 (11th Cir. 2005) (per curiam) (conclusory or unsupported statements are insufficient). There is no additional requirement that Defendants “*negate* the elements of the [Plaintiffs’] case.” *Lujan v. Nat’l Wildlife Fed.*, 497 U.S. 871, 885 (1990) (emphasis in original).

Applied here, on the record developed by Plaintiffs, the only remaining disputes are legal and not factual. It was Plaintiffs’ burden to establish standing.

Discovery revealed that Plaintiffs’ standing rests only on “generalized grievance[s]” about the Enacted Plan as a whole, *United States v. Hays*, 515 U.S. 737, 745 (1995), not the district-specific showing required, *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 262-63 (2015) (*ALBC*). On the merits, it was Plaintiffs’ burden to establish that race predominated, meaning districts are “unexplainable on grounds other than race.” *Cromartie II*, 532 U.S. at 242. Discovery revealed that Plaintiffs’ experts did not consider alternative explanations for districts. At most, Plaintiffs have shown how race was “a side effect” of nonracial redistricting criteria—not enough to overcome the presumption of good faith. *Alexander*, 144 S. Ct. at 1241.

I. Plaintiffs Failed to Establish Standing.

At summary judgment, Plaintiffs “can no longer rest on ... ‘mere allegations’” of standing in their complaints. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992); *see also Bald Mountain Park*, 863 F.2d at 1563. They must marshal evidence specific “to the boundaries of individual districts” where they live, not the boundaries of districts where they do not live and not the Enacted Plan as a whole. *ALBC*, 575 U.S. at 262-63; *see Gill v. Whitford*, 585 U.S. 48, 65-66 (2018) (similar). They must prove they were “personally subjected to a racial classification” or are “represented by a legislator who believes his primary obligation is to represent only the members of a particular racial group.” *ALBC*, 575 U.S. at 263 (cleaned up).

A. Addoh-Kondi Plaintiffs

The basis of the Addoh-Kondi Plaintiffs’ standing is about the Enacted Plan as a whole—namely, that it has only two districts where “Black voters” can “elect candidates of their choice.” Doc. 91-3 at 7. Their depositions confirmed their injuries are not sufficiently district-specific.

District 1. Plaintiffs Addoh-Kondi, Walker, Hall, Hansen, Juarez, Muhammad, and Smith reside in District 1. When asked at depositions how they were harmed by the Enacted Plan, all testified about how they thought the Enacted Plan *as a whole* was not done “fairly.”¹⁶ They testified about how they wanted changes in Districts 3, 4, and 5.¹⁷ As for District 1, they said they liked Commissioner Scales.¹⁸ Their main grievance was instead about the absence of a third district with fewer white voters and more Black voters so they are not “consigned to having three

¹⁶ See Doc. 88-1 at 36:6-9 (Addoh-Kondi) (wants to see “all five districts” “fairly represented”); Doc. 88-14 at 78:16-21 (Walker) (“make sure that everything is done fairly”); Doc. 88-7 at 23:7-13 (Juarez) (asking “that the county commission lines are redrawn ... more fairly and accurately”); Doc. 88-13 at 26:18-19, 32:7 (Smith) (stating she thinks “it was unfair the way it was done”).

¹⁷ See, e.g., Doc. 88-1 at 20:6-8, 20:20-22 (Addoh-Kondi) (discussing changes she wants for District 3); Doc. 88-5 at 75:23-76:2 (Hall) (“all districts should be redrawn”); Doc. 88-6 at 30:18-22 (Hansen) (“the people who are elected in those three districts”—Districts 3, 4, and 5—“are not representative of the broader counties’ ... political inclination”); Doc. 88-7 at 20:10-12 (Juarez) (“[T]here’s a severe power imbalance on the county commission ...”).

¹⁸ Doc. 88-6 at 30:1-3 (Hansen) (testifying he does not “have a preference” about staying in his district); Doc. 88-10 at 52:15-16 (Muhammad) (“Commissioner Scales, she’s always been a fighter.”); Doc. 88-6 at 25:5-10 (Hansen) (thanking Commissioner Scales for supporting the non-discrimination ordinance); Doc. 88-5 at 58:18-22 (Hall) (“[Commissioner Scales] was an advocate in making sure that [federal] funds got to where they needed to get.”); Doc. 88-1 at 45:18-46:2 (Addoh-Kondi) (“Professionally, I would say, yes. I like her as a commissioner. I will say that, yes.”); Doc. 88-7 at 30:7-9 (Juarez) (agreeing that Commissioner Scales “is doing a good job”); Doc. 88-14 at 41:22-42:2 (Walker) (same).

whites as a majority” on the Commission,¹⁹ or the absence of a third district that “represent[ed] what the people in Jefferson County want.”²⁰ Ms. Smith, for example, testified about how if the “county commission was six people ... it would be nice to have three blacks on there, as well as having three whites on there, so we can get fair representation.” Doc. 88-13 at 33:2-7. Plaintiffs’ desires for other districts or the Enacted Plan as a whole are not “specific” to the 2021 redrawing of District 1. *Gill*, 585 U.S. at 66. Their request for “fair” or more “equitable” districts County-wide is insufficient. *See ALBC*, 575 U.S. at 263.

To be sure, some Plaintiffs testified that they felt they were “stacked and packed” in District 1,²¹ but that conclusory assertion is not enough. First, no Plaintiff participated in the 2021 redistricting process, let alone objected to the Enacted Plan.²² It was thus no surprise when some testified that the basis for their assertion that they had been packed was *the complaint*.²³ *But see Lujan*, 504 U.S. at 561; *see*

¹⁹ Doc. 88-10 at 27:11-16 (Muhammad); *see also* Doc. 88-5 at 70:13-17 (Hall) (“[m]ake sure that [the district] maps truly reflect the constituents in the areas ... and the majority of the black population aren’t just packed into one or two areas”); Doc. 88-13 at 32:10-14 (Smith) (“I think we need an opportunity to have a third person on the county commission....”); Doc. 91-3 at 7.

²⁰ *See* Doc. 88-7 at 20:10-12 (Juarez); Doc. 88-7 at 20:19-22 (Juarez) (“[M]y commissioner, represents my needs, but she can’t actually get those things done based on the balance of power in the Commission.”).

²¹ *See* Doc. 88-13 at 26:18-23 (Smith); Doc. 88-1 at 19:18-20:2 (Addoh-Kondi); Doc. 88-5 at 72:23-73:8 (Hall); Doc. 88-10 at 60:21-61:9 (Muhammad).

²² *See* Doc. 88-1 at 18:1-21, 24:5-21 (Addoh-Kondi); Doc. 88-14 at 51:13-52:22 (Walker); Doc. 88-6 at 28:11-23 (Hansen); Doc. 88-5 at 39:18-40:5 (Hall); Doc. 88-7 at 42:16-43:11 (Juarez); Doc. 88-10 at 49:5-50:6 (Muhammad); Doc. 88-13 at 52:16-53:11 (Smith).

²³ *See* Doc. 88-6 at 37:6-15 (Hansen); Doc. 88-1 at 23:15-19, 24:5-12 (Addoh-Kondi); Doc. 88-7 at 18:16-20, 23:1-5 (Juarez).

also *Anderson*, 477 U.S. at 248. Second, Plaintiffs’ testimony showed that their grievance was with the old districts *before* redistricting or rooted in a misunderstanding that new districts were numerically malapportioned,²⁴ neither is sufficient to establish standing to challenge the 2021 Enacted Plan as a racial gerrymander. Third, Plaintiffs’ particular “packing” injury is not redressable. Plaintiffs would have the Commission or this Court move Black voters on the basis of their race from District 1 to another district.²⁵ Even for remedial purposes, race cannot predominate in redistricting. *Shaw II*, 517 U.S. at 905; *see, e.g., Wis. Legislature v. Wis. Elections Comm’n*, 595 U.S. 398, 400-401, 403-06 (2022) (per curiam) (summarily reversing court-imposed redistricting remedy).

District 2. Plaintiff Randall is the only *Addoh-Kondi* plaintiff residing in District 2. He testified he would like to keep Commissioner Tyson as his commissioner. Doc. 88-11 at 93:9-12. His alleged harm was the “majority control” of the Commission as a whole. *Id.* 49:19-50:2, 50:16-19. For the reasons discussed above, that

²⁴ Doc. 88-10 at 24:17-23, 50:14-21 (Muhammad) (his concern with the districts goes “back to the last time there was a redistricting” and “all of the black people were put into two districts”); Doc. 88-5 at 22:5-7, 14-22 (Hall) (first became interested in the district shapes after the 2011 tornadoes); *id.* 73:12-18 (noting that “things have changed” since the districts were packed and the districts need to reflect this “modern day moment”); Doc. 88-14 at 54:18-55:6 (Walker) (prior to the 2021 Enacted Plan had concerns about the old districts being “drawn fairly”); Doc. 88-6 at 28:5-18 (Hansen) (thought the county was “concentrating black populations” “before the districts were drawn”); Doc. 88-13 at 58:6-59:10 (Smith) (describing concern about malapportionment).

²⁵ *E.g.*, Doc. 88-1 at 20:6-11 (Addoh-Kondi) (“What I would hope to be done is that [District 1] is unpacked and that there is a fair amount or an equal amount also in District 3.”); Doc. 88-5 at 76:10-11 (Hall) (“Race is something that we definitely have to look at.”); Doc. 88-10 at 64:5-16 (Muhammad) (agreeing that the Commission needs to move “some of the black population”).

generalized and political grievance regarding the Commission as a whole is insufficient to establish standing to challenge District 2. *See ALBC*, 575 U.S. at 263.

District 3. Only Plaintiff Brown resides in District 3. She testified that she has no opinion about moving voters in or out of District 3. Doc. 88-2 at 55:19-56:4. She stated that she had called Commissioner Stephens twice about garbage services and agreed he was “responsive.” *Id.* 38:18-39:5. Instead, she “would just like to see a more fair percentage overall within the county.” *Id.* 57:1-3. Again, this desire to see “overall” change within the county is insufficient for standing purposes. *See Gill*, 585 U.S. at 65-66. She could not testify that she “personally” was “subjected to [a] racial classification” in 2021, *Bush v. Vera*, 517 U.S. 952, 957 (1996) (plurality op.), or that her Commissioner represents only particular races, *Shaw v. Reno*, 509 U.S. 630, 648 (1993) (*Shaw I*). For the reasons discussed above, Ms. Brown’s generalized grievances about the Commission as a whole cannot establish standing to challenge District 3. *See ALBC*, 575 U.S. at 263.

District 4. Only Plaintiff Bonner resides in District 4. She was not deposed due to health issues. The only information Plaintiffs provided in written discovery was Ms. Bonner’s address, confirmation that she has voted, and the generalized grievance that there are only “two districts” where Black voters can “elect candidates of their choice” in the plan as a whole. Doc. 91-3 at 7. *But see Cromartie II*, 532 U.S. at 249. The burden lies with Plaintiffs to produce evidence sufficient to

establish standing. *See Lujan*, 504 U.S. at 561. They have not met that burden with respect to District 4. *See ALBC*, 575 U.S. at 263.

District 5. Only Plaintiff Long resides in District 5. He testified that he saw the maps of the Commission districts for the first time in 2024, Doc. 88-8 at 36:17-37:3, and that he generally wants to see more racial diversity “[i]n all five districts,” *id.* 57:9. He asserted that the Commission failed to place more “nonblack residents into Districts 1 and 2,” but Mr. Long does not reside in Districts 1 or 2. *Id.* 58:18-19. Plaintiffs lack standing to challenge District 5. *See ALBC*, 575 U.S. at 263.

B. McClure Plaintiffs

District 2. Plaintiff McClure resides in District 2. She testified that she did not care which district she was in and instead cared about “who’s in leadership.” Doc. 88-9 at 78:15. Ms. Brown’s grievance about the Commission as a whole are insufficient to establish standing to challenge District 2. *See ALBC*, 575 U.S. at 263.

Districts 1 through 5 and the Organizational Plaintiffs. The remaining *McClure* Plaintiffs are Greater Birmingham Ministries (GBM), Metro-Birmingham NAACP, and Alabama NAACP. They must establish that their “members would otherwise have standing to sue in their own right” and “the interests at stake are germane to the organization’s purpose.” *Friends of the Earth, Inc. v. Laidlaw Env’tl Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000). Alabama NAACP has no individual members, Doc. 88-12 at 33:2-3 (Simelton), and it put forth only conclusory

allegations that voters were “unconstitutionally segregated,” Doc. 91-2 at 14, without “specific facts” to substantiate that legal conclusion in a district-specific way, *see Lujan*, 504 U.S. at 561; *Friends of the Earth*, 528 U.S. at 181. GBM has no members in District 5, and neither GBM nor Metro-Birmingham have put forth any district-specific facts to substantiate their claims of harm to members living in those districts. Doc. 91-2 at 14. Their leaders’ testimony echoed that of the other Plaintiffs. GBM wants district lines redrawn to “[r]etain two majority black districts and increase the voices of African-Americans across two or three of the other districts,” “using Jefferson County’s racial composition.” Doc. 88-4 at 48:4-7 (Douglas).²⁶ Metro-Birmingham NAACP’s Dorothea Crosby testified she wants districts more “fairly drawn” but does not want any individual member of the Commission to be changed. Doc. 88-3 at 85:5, 91:4-8. They have not claimed district-specific harms on behalf of their members. Their grievances about the plan as a whole fall short. *ALBC*, 575 U.S. at 263.

II. Plaintiffs Failed to Establish that Race Predominated.

Proving a racial gerrymander requires evidence that “[r]ace was the criterion that ... could not be compromised.” *Shaw II*, 517 U.S. at 907. “Race must not simply have been *a* motivation,” but “the *predominant* factor motivating [lawmakers’]

²⁶ Doc. 88-12 at 77:7-13, 80:12-18, 83:6-9, 14-16 (Simelton) (asking to move Black residents to different districts to “increase their opportunity to elect another candidate of their choice”)

districting decision.” *Cromartie II*, 532 U.S. at 241 (cleaned up). “To make that showing, a plaintiff must prove that [lawmakers] ‘subordinated’ race-neutral districting criteria such as compactness, contiguity, or core preservation to ‘racial considerations.’” *Alexander*, 144 S. Ct. at 1234. And the plaintiff must overcome the “presumption of legislative good faith,” which “directs district courts to draw the inference that cuts in the [lawmakers’] favor when confronted with evidence that could plausibly support multiple conclusions.” *Id.* at 1235-36. The plaintiff’s burden is “especially stringent.” *Id.* at 1236.

A. Plaintiffs Answered the Wrong Question.

Plaintiffs did not consider whether the districts are “explainable on grounds other than race,” *Cromartie II*, 532 U.S. at 242 (cleaned up), because Plaintiffs and their experts assumed that race can predominate “accidentally.”²⁷ What mattered to Plaintiffs’ experts were the racial “results” of redistricting.²⁸ They ignored nonracial explanations for district lines, including minimizing population deviation,

²⁷ See e.g., Doc. 90-29 at 15:19 (Fairfax); Doc. 90-56 at 49:17-23 (Williamson).

²⁸ Doc. 90-29 at 143:14-16 (Fairfax) (“I’m not stating that the intent of the person is to intentionally do this”—*i.e.* add a majority-minority VTD. “It’s the results that occur.”); see also Doc. 90-56 at 51:11-15 (Williamson) (“race could still predominate if there was a kind of disproportionate impact” on minority groups); *id.* 97:4-7 (“a map can still constitute a racial gerrymander even if ... it wasn’t an intentional racial gerrymander”); Doc. 90-56 at 51:19-21 (Williamson) (“[Y]ou don’t have to actively set out and say: We’re going to let race predominate in order for race to predominate.”); Doc. 90-14 at 49:10-50:12 (Cooper) (testifying that a redistricter should “[a]bsolutely” consider race “[t]hroughout” the redistricting process “to avoid diluting minority voting strength” even for a plan drawn race-neutrally); Doc. 89-12 at 5 (Liu) (“unnecessarily, too many Black voters,” without regard to map drawer’s intent).

maximizing core retention, following municipal lines, or other lawful and nonracial considerations.²⁹ Dr. Williamson, for example, answered that his “analysis was exclusively limited to race” when asked “whether the districts are explainable for reasons other than race.” Doc. 90-56 at 102:25-103:2. Mr. Fairfax testified that a map drawer “may not even use race, and still race can predominate.” Doc. 90-29 at 15:10-11, 97:9-11.

Plaintiffs cannot prove race predominated by pointing to the racial demographics of the districts alone. “After all, the Constitution does not place an *affirmative* obligation upon [lawmakers] to avoid creating districts that turn out to be heavily, even majority, minority.” *Cromartie II*, 532 U.S. at 249. The question is whether a district and its resulting racial makeup was “for predominately racial, as opposed to political or traditional, districting motivations,” *id.*, because “the constitutional violation” in racial gerrymandering cases stems from the “*racial purpose* of

²⁹ See, e.g., Doc. 90-43 at 91:7-10 (Liu) (there exist “[a]n infinite number of possibilities, but I don’t know whether other interaction is statistically significant or not because I didn’t do those”); *id.* 90:2-7 (didn’t consider other interactive variables because “I’m not doing this like a scientific discovery of what the true cause”); Doc. 90-56 at 209:11-13 (Williamson) (testifying that Warrior-area change is evidence of racial predominance and “illustrates how what could appear as a race neutral approach could still have very—very stark racial implications”); *id.* 231:16-17 (“didn’t feel that accounting for population size was necessary”); *id.* 232:2-3 (“did not evaluate alternative explanations”); *id.* 234:13-17 (“viewed adherence to existing political boundaries, like municipalities as superfluous to what I was trying to evaluate”); Doc. 90-14 at 166:19-25, 100:14-16 (Cooper) (acknowledging that Illustrative Plans D and E did not match the Enacted Plan’s core retention); *id.* 129:3-10 (explaining that he prioritized minimizing VTD splits instead of municipality splits); Doc. 90-29 at 170:4-10 (Fairfax) (agreeing that moving a district line to follow I-65 “is irrelevant to [his] racial gerrymander analysis”).

state action,” *Miller*, 515 U.S. at 913 (emphasis added), not racially disparate “side effect[s]” of nonracial state action, *Alexander*, 144 S. Ct. at 1241. In *Alexander*, for example, Plaintiffs failed to show that race predominated based on evidence about the BVAP of a district or the “tight correlation” between race and nonracial priorities such as politics or core retention. *Id.* at 1241, 1245. Here too, Plaintiffs must show that districts are “unexplainable on grounds other than race.” *Cromartie II*, 532 U.S. at 242 (cleaned up). If there remains a “possibility” that a district’s racial makeup was the product of *nonracial* districting criteria, including “core preservation,” then Plaintiffs have not shown race predominated. *Alexander*, 144 S. Ct. at 1234. The “presumption of legislative good faith directs district courts to draw the inference that cuts in the [lawmakers’] favor when confronted with evidence that could plausibly support multiple conclusions.” *Id.* at 1235-36. Plaintiffs here misunderstood that applicable legal standard and did not account for nonracial explanations for each district, *infra*, leaving an absence of evidence that race predominated.

Plaintiffs cannot salvage their case by proffering “illustrative” plans, Doc. 89-5 at ¶¶12-13 (Cooper), or “cherry-pick[ed]” examples of other ways that the Commission could have redistricted, Doc. 90-49 at 124:18 (McCartan). Plaintiffs’ alternatives did not emulate the nonracial criteria of the Enacted Plan—particularly core

retention and population deviation.³⁰ They instead prioritized Plaintiffs’ preferred criteria, such as keeping most municipalities whole, *e.g.* Doc. 90-29 at 182:1-7 (Fairfax), or avoiding VTD splits, *e.g.* Doc. 90-14 at 130:6-14 (Cooper), or intentionally creating a third majority-Black district, *id.* 117:1-5. Such alternatives are not evidence that race predominated in the Enacted Plan; they are non-probative evidence that the Commission could have prioritized different criteria. Plaintiffs might disagree with the Commission’s prioritization of certain nonracial criteria over others, but “[t]he Equal Protection Clause does not prohibit misshapen districts. It prohibits unjustified racial classifications.” *Bethune-Hill*, 580 U.S. at 189.

B. Plaintiffs Have Not Shown That Districts Are Unexplainable on Grounds Other Than Race.

The Enacted Plan made minimal changes to the existing districts to account for population changes.³¹ Dr. Barber’s report shows the particular precincts moved for each district alongside observable nonracial explanations for that movement. Doc. 89-1 at 10-39. It is undisputed that the Commission generally had to move precincts from *overpopulated* Districts 3, 4, and 5 into *underpopulated* Districts 1 and 2, pursuant to the Commission’s stated goal that districts should be almost

³⁰ See, *e.g.*, Doc. 90-29 at 181:8-11 (Fairfax); Doc. 90-14 at 98:1-6, 100:14-16, 166:19-25, 167:19-25, 178:1-19 (Cooper) (discussing lower core retention and greater population deviation of alternatives); Doc. 90-49 at 124:16-20 (McCartan) (admitting that he “cherry-pick[ed]” sample plans).

³¹ Doc. 89-14 at ¶36 (McCartan) (showing core retention exceeded 90% for each district); Doc. 89-1 at 43 tbl. 6 (Barber) (reporting overall core retention of 95.1%).

exactly equal in population.³² It is also undisputed that the strongest predictor for moved precincts was their adjacency to Districts 1 and 2.³³ In other words, Districts 1 and 2 grew into areas previously occupied by Districts 3, 4, and 5. Moving adjacent precincts into Districts 1 and 2 required fewer changes to the existing districts than moving faraway precincts into Districts 1 and 2.³⁴

The resulting racial makeup of the new districts is undisputed. Comparing the old districts (using 2010 Census data) and the Enacted Plan (using 2020 Census data), the BVAP of all districts increased except for District 2.³⁵ District 2 gained more white population than any other district; District 5 lost more white population than any other district.³⁶

1. District 1. Plaintiffs claim that District 1 is racially gerrymandered because it is “packed” with too many Black voters.³⁷ District 1 was 73.2% BVAP in the 2013 Plan (using 2010 Census data), grew to 76.4% due to population changes by 2020

³² Doc. 31-2 at 11; *compare* Doc. 89-1 at 10 (Barber), *with* Doc. 89-7 at ¶45 (Fairfax); *see also* Doc. 89-15 at 4 (Williamson).

³³ *See* Doc. 89-1 at 10 (Barber); Doc. 89-13 at 3 (Liu); Doc. 90-29 at 62:14-19 (Fairfax); *see also* Doc. 89-7 at ¶43 (Fairfax) (“[T]he drafters of the Adopted 2021 Plan decided to select a least change approach for plan development.”); Doc. 90-14 at 98:7-12 (Cooper) (acknowledging that the Enacted Plan had high core retention); Doc. 90-49 at 72:10-15 (McCartan) (same).

³⁴ *See, e.g.*, Doc. 89-1 at 10 (Barber); Doc. 90-29 at 62:14-19 (Fairfax).

³⁵ Doc. 89-1 at 10, 22, 31, 34, 37 (Barber).

³⁶ Doc. 90-35 (Fairfax); *see also* Doc. 90-36 (Fairfax) (percentage of white population increased slightly across *all* districts, including in Districts 1 and 2).

³⁷ Addoh-Kondi Doc. 1 ¶2; McClure Doc. 1 ¶¶74-75, 82.

(using 2020 Census data), and then decreased slightly to 76.3% in the Enacted Plan (using 2020 Census data). Doc. 89-1 at 10 (Barber).

a. Overall District 1 geography: District 1 retained all existing precincts except for one 89-person precinct in response to voters’ complaints about the distance to their voting precinct.³⁸ District 1 grew into nearby areas previously districted in Districts 3 and 4. Doc. 89-1 at 10-21 (Barber).

As Plaintiffs’ expert showed (Cooper Figure 3, below), it is unsurprising that the Black population of District 1 has trended upward over time. Between 1990 and today, the parts of central Jefferson County included in present-day District 1 have

dramatically declined in overall population (174,020 to 135,622) and simultaneously increased in percentage of

Figure 3: 2021 Commission Plan Boundaries (1990 Census vs 2020 Census)

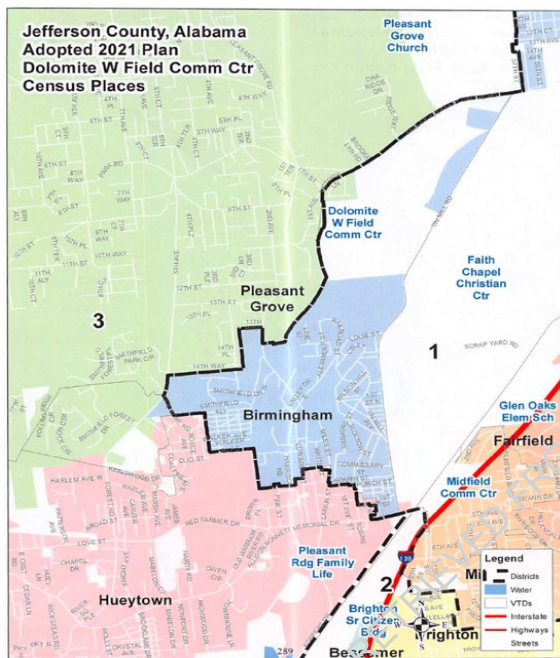
District	1990 Pop.	% 1990 SR Black	2020 Pop.	% 2020 SR Black
1	174020	47.70%	135622	76.75%
2	182399	68.93%	133561	64.75%
3	94924	10.44%	136644	26.32%
4	102943	7.15%	134444	27.22%
5	97220	2.59%	134450	13.23%

Doc. 89-6 at 8, fig. 3 (Cooper)

Black population (47.7% to 76.75%). The racial effect of retaining District 1’s existing lines is not evidence of racial gerrymandering; for there is nothing unconstitutional about districts “that turn out to be heavily, even majority, minority,” *Cromartie II*, 532 U.S. at 249, when they are drawn for race-neutral reasons like core retention, *Alexander*, 144 S. Ct. at 1234, 1245.

³⁸ See Doc. 89-1 at 7, tbls. 1-2 (Barber) (90% core retention for District 1); *id.* at 12-13 (discussing District 1); Doc. 47 at 43:18-22 (Stephenson) (explaining voters’ complaints).

b. District 1 added precincts: To re-populate District 1, it is undisputed that adjacent precincts would be added, that those adjacent precincts had relatively high BVAPs compared to the outer areas of the County, and that those adjacent precincts varied in size, meaning only some combinations of precincts would satisfy the Commission's population equality goal.³⁹ Of the adjacent precincts, the Commission selected the following four:



Doc. 90-31 at 225 (Fairfax)

Dolomite West Field City Community Center (Precinct 1365): The Commission added a portion of the Dolomite precinct from District 3 to District 1. Doc. 89-1 at 13-15 (Barber). Plaintiffs contend the precinct's Black population was too high.⁴⁰ But Plaintiffs do not dispute that the new district line follows Birmingham municipal lines (in blue, left),⁴¹ which is a "possib[le]" alternative nonracial

³⁹ See Doc. 90-43 at 82:5-9 (Liu); Doc. 90-56 at 54:24-55:7, 109:25-110:9, 112:25-113:9 (Williamson); Doc. 89-1 at 14, 17 (Barber); see also Doc. 90-14 at 122:22-25 (Cooper) (describing Birmingham as a "community of interest" because of "the history of Jefferson County"); *id.* 153:8-154:2 (describing his split of Birmingham to distribute Black population across three districts).

⁴⁰ See Doc. 89-7 at ¶¶72-73 (Fairfax); Doc. 89-15 at 11 (Williamson); Doc. 89-9 at ¶¶21-22 (Fairfax).

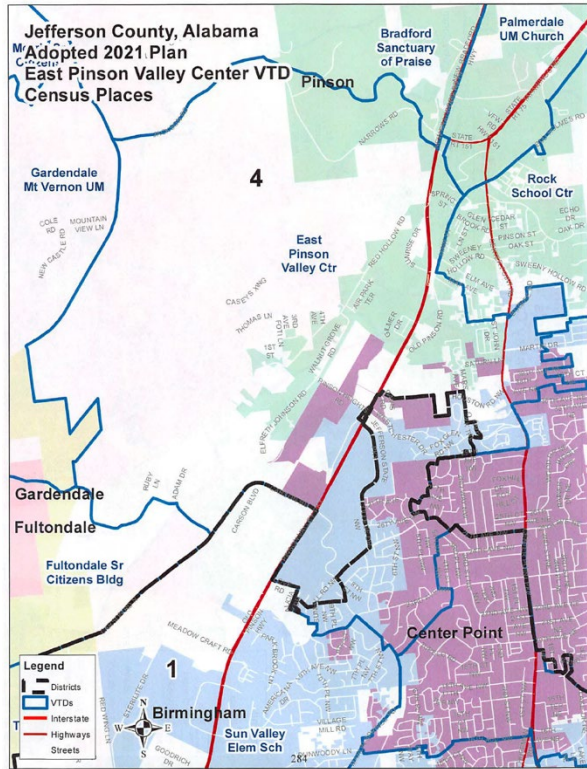
⁴¹ Doc. 89-1 at 14 (Barber); Doc. 89-9 at ¶20 (Fairfax) (agreeing that Precinct 1365 "tends to follow the municipality boundary"); Doc. 90-29 at 157:3-13 (Fairfax).

explanation for the expanded district line. *See Alexander*, 144 S. Ct. at 1241. Nor do they dispute that adding the entire Dolomite precinct would overpopulate District 1 and could make the district less compact. Doc. 90-29 at 202:5-203:4 (Fairfax).

Minor Fire Station (Precinct 1285): The Commission also expanded District 1 by moving Precinct 1285 from District 3 to District 1. With a BVAP of 50.8%, the precinct was one of the lower BVAP precincts adjacent to District 1. Doc. 89-1 at 11 (Barber). Adding it *reduced* the overall BVAP of District 1. *Id.* at 14-15. The added precinct *contradicts* Plaintiffs’ racial gerrymandering claim for District 1. *See Denney v. City of Albany*, 247 F.3d 1172, 1184 (11th Cir. 2001) (summary judgment is appropriate when non-moving party’s evidence “flatly contradict[s]” their theory).

Center Point–Area Precincts (Precincts 1065 & 1125): The Commission moved a portion of Precinct 1065 containing mostly Birmingham neighborhoods,⁴² as well as neighboring Precinct 1125 containing both Birmingham and Center Point neighborhoods from District 4 to District 1. *See* Doc. 89-1 at 14-19 (Barber). Seventy percent of the residents in the added portion of Precinct 1065 are Birmingham residents (or 2,168 of 3,105 people) (shown in blue, below). *Id.* at 16-17. Adding those Birmingham neighborhoods was consistent with the Enacted Plan’s keeping most of

⁴² Mr. Fairfax and other experts analyzed Census-designated VTDs, not the County’s precincts. Plaintiffs do not dispute that the Commission redistricts based on precincts. Doc. 31 at ¶34 (Stephenson). The “East Pinson Valley Ctr” VTD shown in Mr. Fairfax’s appendix above is similar, though not exactly the same, as the Center Point Community Center precinct.



Doc. 90-31 at 220 (Fairfax)

Birmingham in Districts 1 and 2, instead of splintering larger fractions of Birmingham across all districts.⁴³ Plaintiffs also do not dispute that the added Birmingham neighborhoods were in District 1 Commissioner Scales's former city council district, and that Commissioner Scales would be running for reelection to the Commission again after redistricting.⁴⁴ And while Plaintiffs contend that splitting Precinct

1065 is evidence of racial gerrymandering, their experts agreed that the entire precinct was too big to be included without exceeding the Commission's +/-1% population goal;⁴⁵ that adding the entire precinct would create a new split, dividing Pinson between District 1 and 4 (shown in green above);⁴⁶ that census blocks of various

⁴³ See Doc. 89-1 at 9, 17 (Barber); *id.* at 9 (showing 43% of Birmingham districted in District 1 and 50% of Birmingham districted in District 2 and only small portions in Districts 3, 4, and 5).

⁴⁴ See Doc. 89-1 at 19, fig. 7 (Barber); *see also* Doc. 89-9 at ¶29 (Fairfax) (agreeing that Precinct 1065 coincides with Commissioner Scales's old city council district); Doc. 90-29 at 34:17-35:3, 120:14-121:1 (Fairfax); Doc. 88-11 at 110:16-111:3 (Randall) (agreeing that an incumbent will want to keep her district); Doc. 88-13 at 64:5-13 (Smith) (agreeing that incumbents "may want to redraw their district in a way that helps them stay in office").

⁴⁵ See Doc. 90-29 at 108:14-22 (Fairfax) (describing total population of precinct); *id.* 111:9-23 (agreeing that the Commission could not have met its "population equality goal" by moving the entire precinct, holding all else equal)

⁴⁶ Doc. 90-29 at 160:23-161:4 (Fairfax).

racial groups exist on either side of the split;⁴⁷ and that the divided precinct followed major roadways, including Pinson Valley Parkway and Center Point Parkway.⁴⁸ All of these constitute alternative explanations for District 1’s line. *See Alexander*, 144 S. Ct. at 1235.

c. Plaintiffs’ statistical evidence: Some Plaintiffs’ experts performed statistical tests that they contend are probative of racial gerrymandering. They are not. Dr. Liu performed a regression to show that, among adjacent precincts, higher BVAP precincts were correlated with those added to District 1. He testified that he did not analyze other features of the precincts—such as the substantial population differences across precincts—that could explain why one precinct was chosen over the others. Doc. 90-43 at 90:15-91:12 (Liu). Dr. Liu thus assumed the answer to his question, testing only “adjacen[cy] and heavy Black” without anything against which he could compare that interaction. *Id.* 89:3-4. By selecting the singular variable (BVAP) to interact with adjacency, Dr. Liu did not consider the Commission’s population goals or other alternative explanations. *See Alexander*, 144 S. Ct. at 1245.

Likewise, Dr. McCartan purported to compare the Enacted Plan to simulations and determine statistically significant variations between the Enacted Plan and simulations. *See* Doc. 89-14 at ¶¶40-41 (McCartan). But rather than compare the

⁴⁷ Doc. 89-1 at 16-17 (Barber); Doc. 90-29 at 122:9-123:4, 131:18-23 (Fairfax).

⁴⁸ Doc. 90-29 at 112:6-23 (Fairfax); *see also* Doc. 88-1 at 54:18-55:4 (Addoh-Kondi) (describing Center Point Parkway as a “major road” and how Center Point is split into “east and west”).

Enacted Plan against the full suite of simulations, Dr. McCartan “averaged” demographics of simulations to a single number for each district and did not limit that analysis to simulations with the same or better core retention as the Enacted Plan. *Id.* at fig. 4 note; Doc. 90-49 at 116:13-117:2 (McCartan). When instead Dr. McCartan compared the BVAP of District 1 in the Enacted Plan to all 120,000 plans in Simulation Set 5, he agreed District 1 was “not an outlier.” *Id.* 115:11-15.

Finally, Dr. Williamson attempted to compare precincts moved into District 1 with precincts that remained in District 1 in 2013 and 2021. His analysis was riddled with errors.⁴⁹ With respect to District 1, Dr. Williamson misreported his results; his test actually showed that precincts moved into District 1 had on average *lower* BVAP than those already in District 1—contrary to Plaintiffs’ allegations of “packing.” Doc. 89-3 at 2-3 (Barber); *see, e.g., Barnes v. Sw. Forest Indus., Inc.*, 814 F.2d 607, 610 (11th Cir. 1987) (evidence “directly contradicts plaintiffs’ claim”); *Denney*, 247 F.3d at 1184 (similar).

d. Plaintiffs’ alternatives: Plaintiffs’ experts proffered alternatives that they asserted the Commission could have chosen to decrease District 1’s BVAP—that is, they contended that the Commission could have chosen different precincts *on the*

⁴⁹ Doc. 89-1 at 26-27, 39-40 (Barber); Doc. 89-3 at 1-3 (Barber); *see, e.g.,* Doc. 90-56 at 165:23-166:8, 170:5-14 (Williamson) (discussing observable errors in backup documents).

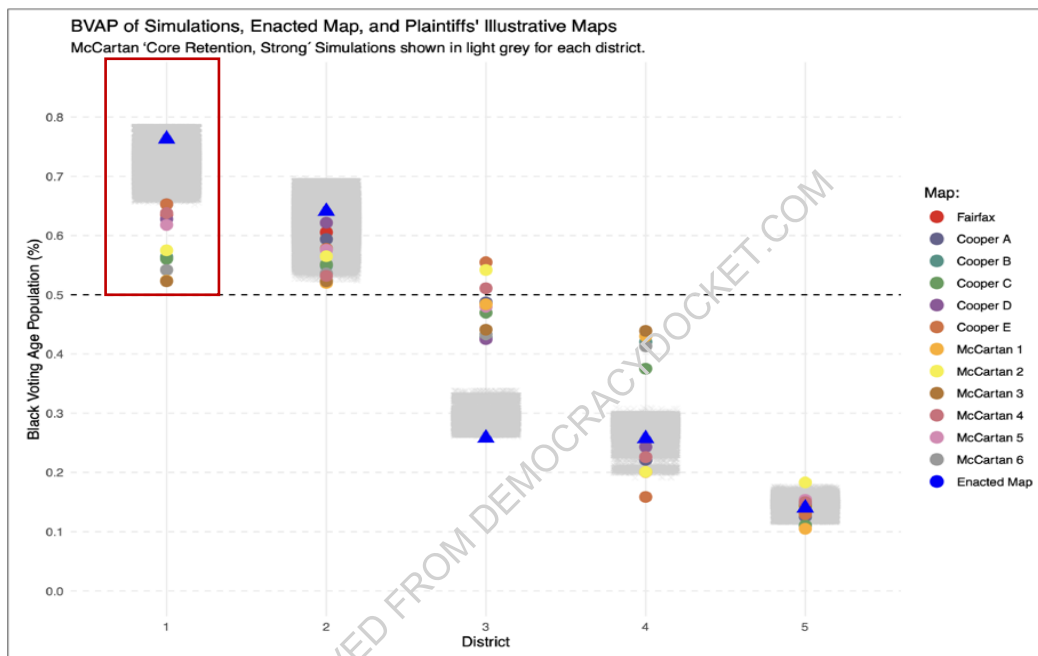
basis of race to obtain what Plaintiffs contend would be a better racial result.⁵⁰ Plaintiffs’ alternatives are not evidence that *the Commission* made race the criterion that “could not be compromised” in the Enacted Plan. *Shaw II*, 517 U.S. at 907. They do not mirror the Enacted Plan’s nonracial redistricting priorities. *See Alexander*, 144 S. Ct. at 1235. Plaintiffs cannot “meet the high bar for a racial-gerrymandering claim by failing to produce ... an alternative map” that performs the same as the Commission’s map on nonracial criteria such as core retention and population equality. *Id.*

Nor is it even clear that Plaintiffs’ alternatives are constitutional. Mr. Fairfax hesitated when asked whether the Commission could have selected his alternative without race predominating. Doc. 90-29 at 195:12-196:6. Mr. Cooper testified that he “had highlights on VTDs that were 30 percent or more Black” as he drew his plan. Doc. 90-14 at 143:12-15. And tellingly, when Dr. Barber compared the Enacted Plan and Plaintiffs’ alternatives to 120,000 race-neutral simulations, the Enacted Plan was no outlier; Plaintiffs’ alternatives were. Doc. 89-2 at 4 (Barber). Dr. Barber compared all plans against Dr. McCartan’s Simulation Set 5, simulating the Enacted Plan’s core retention and population criteria. As Dr. Barber showed (below),

⁵⁰ Doc. 89-5 at 13, 15, 17 (Cooper); Doc. 89-6 at 11, 14 (Cooper); Doc. 89-7 at 44, fig. 10 (Fairfax); Doc. 89-14 at 23 (McCartan); *see also, e.g.*, Doc. 89-12 at 5 (Liu) (“[I]f a district has packed too many Blacks to the extent that significant numbers of the votes from these Black voters ... are ‘wasted’ ... then this district ... includes, unnecessarily, too many Black voters[.]”); *see also* Doc. 90-29 at 202:13-18 (Fairfax) (agreeing that “it’s a feature and not a bug” if the Commission had selected a precinct with a lower BVAP and, for population equality, had to remove other “precincts with greater than 80% black population”); Doc. 89-7 at ¶¶50, 52 (Fairfax).

Plaintiffs' alternatives depressed District 1's BVAP lower than all or nearly all 120,000 simulations. District 1's BVAP in the Enacted Plan, by comparison, falls squarely within these race-neutral simulations and "is not an outlier." Doc. 90-49 at 115:11-15 (McCartan).

Figure 1: Racial Composition of Districts compared to Simulations



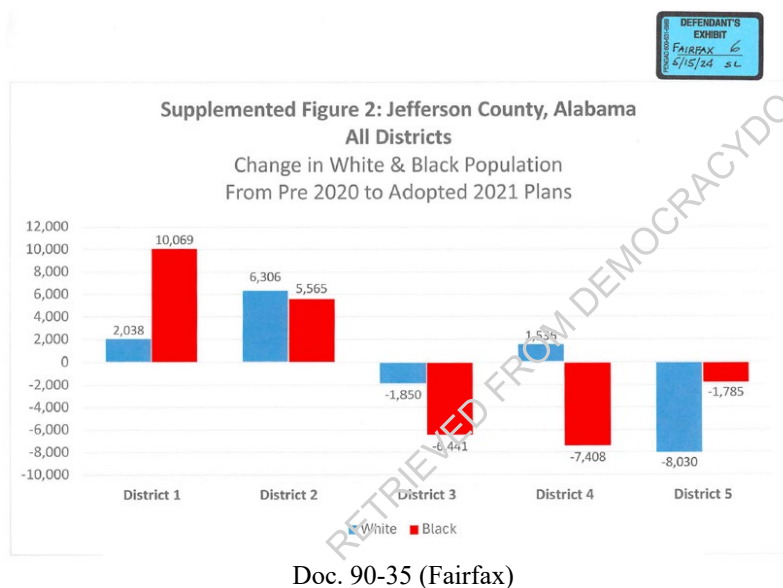
Doc. 89-2 at 4, fig. 1

At most, Plaintiffs have shown that District 1's BVAP was a "side effect of" the Enacted Plan's adherence to core retention and minimal population deviation. *See Alexander*, 144 S. Ct. at 1241. Plaintiffs' experts' failure to consider alternative nonracial explanations combined with the presumption of legislative good faith defeats Plaintiffs' claims. *Id.* at 1241, 1245.⁵¹

⁵¹ See, e.g., Doc. 90-29 at 61:14-63:1 (Fairfax) (minimizing changes to district); *id.* 112:6-23 (Fairfax) (following major roads and highways); *id.* 116:4-10 (ignoring differing populations in Center Point areas); *id.* 116:21-117:5 (keeping neighborhoods together); *id.* 120:18-121:1

2. District 2. Plaintiffs claim that District 2 is racially gerrymandered and is “packed” with too many Black voters.⁵² The BVAP of District 2 was 71.3% in the 2013 Plan (using 2010 Census data), then decreased to 66.7% due to population changes by 2020 (using 2020 Census data), and decreased further to 64.1% in the Enacted Plan (using 2020 Census data). Doc. 89-1 at 22 (Barber).

a. Overall District 2 geography: District 2 retained all existing precincts and added six new precincts. Doc. 89-1 at 7, tbls. 1-2 (Barber) (90% core retention); *id.*



at 22-30. The Commission added more white residents to District 2 than Black residents overall, *decreasing* District 2’s BVAP.⁵³ The changes to District 2 “directly contradict[] plaintiffs’ claim.” *Barnes*, 814 F.2d at 610.

(including former City Council constituents); *id.* 142:8-17 (following municipal lines); Doc. 90-56 at 102:25-103:4 (Williamson) (explaining that he did not “analyze whether the districts are explainable for reasons other than race”); *id.* 114:2-9 (ignoring racial distribution within each district), 231:16-20 (ignoring differences in populations); *id.* 230:10-21 (ignoring municipal boundaries in Center Point area); *id.* 234:6-17 (ignoring municipal boundaries in Dolomite area); *id.* 235:21-236:7 (ignoring population differences in Dolomite precinct).

⁵² Addoh-Kondi Doc. 1 ¶2; McClure Doc. 1 ¶¶74-75, 84.

⁵³ See Doc. 89-1 at 22 (Barber); Doc. 90-29 at 90:7-10, 84:14-85:4 (Fairfax).

When accounting for core retention, District 2's BVAP falls squarely in the middle of the BVAP range for the same district in 120,000 neutral simulations.⁵⁴

b. Added District 2 precincts: The parties do not dispute that the Commission added adjacent precincts of particular sizes to keep District 2 within 1% of ideal population.⁵⁵ The added precincts ranged from 13.9% BVAP to 79.4% BVAP.⁵⁶

Oxmoor Valley Community Center (Precinct 2350): Plaintiffs do not dispute that the Enacted Plan reunited the Oxmoor Valley Community Center precinct, previously split between Districts 2 and 5 in the 2013 Plan.⁵⁷ That alternative explanation defeats Plaintiffs' contention that race predominated. *Alexander*, 144 S. Ct. at 1235-36. Moreover, the portion of the precinct moved from District 5 to District 2 was 27.5% BVAP, meaning it *lowered* the BVAP of District 2. Doc. 89-1 at 27 (Barber). That undisputed fact is *contrary to* Plaintiffs' racial gerrymandering claim and favors summary judgment. *See, e.g., Denney*, 247 F.3d at 1184; *see also Scott v. Harris*, 550 U.S. 372, 380 (2007) (when facts "blatantly contradicted by the record," "no reasonable jury could believe it").

Other Homewood-area Precincts (Precinct 2095 & 2450): The Commission moved additional Homewood-area precincts from overpopulated District 5. That

⁵⁴ Doc. 89-2 at 4, fig. 1 (Barber); Doc. 89-14 at 19, tbl. 2 (McCartan).

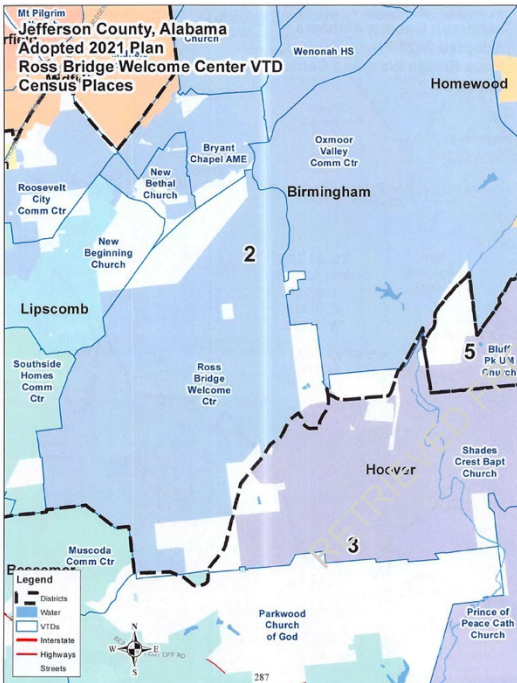
⁵⁵ *See* Doc. 27-1 at 33:24-36:17; Doc. 31-2; Doc. 89-7 at ¶43 (Fairfax); Doc. 90-29 at 179:18-23 (Fairfax); Doc. 89-1 at 22 (Barber); Doc. 89-13 at 3 (Liu); Doc. 90-43 at 82:5-7 (Liu).

⁵⁶ Doc. 89-1 at 23, fig. 8, 29 (Barber).

⁵⁷ Doc. 89-1 at 27, 38 (Barber).

included the largest precinct added to District 2 (with 3,808 people), which also had the lowest BVAP (of 13.9%). *See* Doc. 89-1 at 27, fig. 11 (Barber). Together, the precincts are overwhelmingly White and had the effect of *lowering* the BVAP of District 2, *id.* at 27-28—again, an undisputed fact that *contradicts* Plaintiffs’ racial gerrymandering claim.

Ross Bridge Welcome Center (Precinct 2365): The Commission added a portion of the Ross Bridge precinct from District 3 to District 2. Doc. 89-1 at 25-26



Doc. 90-31 at 223 (Fairfax)

(Barber). Plaintiffs have not disputed that adding the entire precinct would exceed the Commission’s +/-1% population goal. *E.g.*, Doc. 90-29 at 136:23-137:7 (Fairfax). Nor do they dispute that the portion added to District 2 had a 50.6% BVAP, meaning it *lowered* the existing district’s overall BVAP. Doc. 89-1 at 26 (Barber). Nor do they dispute that the precinct was divided mostly along municipal lines,

with the Birmingham portion of the precinct included in District 2 (in blue, above).⁵⁸

⁵⁸ Doc. 89-7 at ¶61 (Fairfax); *see also* Doc. 90-29 at 140:17-22 (Fairfax); Doc. 90-56 at 215:19-216:6 (Williamson); Doc. 89-9 at ¶37 (Fairfax).

In the light of those alternative explanations for District 2, Plaintiffs cannot meet their burden to show that race predominated. *Alexander*, 144 S. Ct. at 1235-36.

Bessemer-area Precincts (Precincts 2245 & 2215): The Commission moved a portion of the Bessemer Civic Center precinct and the neighboring Bessemer precinct from District 3 to District 2. Plaintiffs contend that the split precinct is evidence of racial predominance. But they did not dispute that adding the entire precinct would exceed the Commission's +/-1% population deviation goal;⁵⁹ that there are census blocks of varying BVAPs on either side of the split;⁶⁰ and that adding the whole Bessemer Civic Center precinct would result in a *higher* BVAP (71.8%) than the area actually added (60%).⁶¹ Those undisputed facts cannot be reconciled with Plaintiffs' racial gerrymandering accusations. Plaintiffs' experts, moreover, failed to account for alternative explanations for the split precinct.⁶² They testified that they did not consider Plaintiffs' testimony, including Plaintiff Brown who lives in the Bessemer area and testified extensively about differences between the areas of Bessemer remaining in District 3 versus areas moved into District 2.⁶³

⁵⁹ Doc. 90-29 at 126:11-22 (Fairfax).

⁶⁰ Doc. 89-1 at 25 (Barber); Doc. 90-29 at 146:16-147:2 (Fairfax).

⁶¹ Doc. 89-1 at 24-25 & fig. 9 (Barber).

⁶² Doc. 90-29 at 133:21-134:7 (Fairfax) ("I just know that they exist in the same VTD or precinct."); Doc. 90-56 at 220:9-17 Williamson (describing "communities of interest" in Bessemer as "superfluous" to his analysis); *id.* 219:19-220:2 ("agnostic" to population differences).

⁶³ *Compare* Doc. 88-2 at 69:16-71:20, 79:2-23 (Brown) *with* Doc. 90-29 at 48:22-49:1 (Fairfax); Doc. 89-56 at 82:17-20 (Williamson); Doc. 90:14 at 170:18-20 (Cooper).

c. Plaintiffs’ contrary statistical evidence. Plaintiffs’ own experts agree that there is no quantitative evidence of race predominating in District 2. Mr. Fairfax testified that there were *not* “demographic shifts” in District 2 that were evidence of race-predominant redistricting. Doc. 90-29 at 89:22-90:6. Using Dr. Liu’s own regression analysis, there is no statistical significance between race and which adjacent precincts were moved into District 2. Doc. 89-2 at 5, tbl. 2 (Barber). Likewise, Dr. McCartan testified that District 2 in the Enacted Plan was not an outlier compared to 120,000 race-neutral alternatives; prioritizing core retention, “half” of the race-neutral “simulations had a higher BVAP than District 2.”⁶⁴ And Dr. Williamson recognized that precincts moved into District 2 had on average *lower* BVAPs than existing District 2 precincts and testified that negative correlation “could be one piece of evidence” supporting the “*unpacking*” of District 2.⁶⁵

What’s left of Plaintiffs’ challenge to District 2 is only their observation that it remains a majority-Black district. Plaintiffs’ experts blinded themselves to alternative explanations for District 2. *See Cromartie II*, 532 U.S. at 241-42; *see also Alexander*, 144 S. Ct. at 1245.⁶⁶ Indeed, they blinded themselves to racial evidence

⁶⁴ Doc. 90-49 at 107:3-7, 115:16-20 (McCartan); *accord* Doc. 89-2 at 4, fig. 1 (Barber).

⁶⁵ Doc. 89-16 at 4 (Williamson); Doc. 90-56 at 187:15-19 (Williamson).

⁶⁶ *See, e.g.*, Doc. 90-29 at 145:9-18 (Fairfax) (population of precinct); Doc. 90-29 at 134:2-7 (Fairfax) (keeping communities together); Doc. 90-56 at 188:8-16 (Williamson) (ignoring differing populations of Homewood-area precincts); *id.* 195:6-13 (ignoring municipal lines separating Homewood-area precincts from Mountain Brook precincts); *id.* 201:18-24 (ignoring that Oxmoor Valley precinct was in District 2 in part and not accounting for specific racial demographics of

contrary to their claim that District 2 was a racial gerrymander.⁶⁷ Not one of Plaintiffs' experts could say what the Commission should have done differently in the redistricting process and still meet its population-equalization and core-retention goals. *See Alexander*, 144 S. Ct. at 1241, 1245.⁶⁸ Absent evidence that race predominated, summary judgment is warranted. *See Celotex*, 477 U.S. at 324.

3. District 3. Plaintiffs claim that District 3 is racially gerrymandered and should have more Black voters.⁶⁹ District 3 was 21.7% BVAP in the 2013 Plan (using 2010 Census data) and grew to 25.8% in the Enacted Plan (using 2020 Census

portion of precinct moved from District 5 to 2); *id.* 219:19-220:2 (“agnostic” to population differences in Bessemer); *id.* 220:3-17 (deciding different communities of interest in Bessemer area was “superfluous” to analysis); *id.* 216:4-6 (describing analysis as “agnostic” to municipal boundaries in Ross Bridge precinct).

⁶⁷ *See, e.g.*, Doc. 90-56 at 187:15-21 (Williamson) (difference of means test “could be one piece of evidence” showing unpacking of district 2); *id.* 191:18-192:12 (testifying that he would need to “interrogate more fully” the fact that thousands more white voters than Black voters were moved into District 2 from two Homewood-area precincts when accounting for population); *id.* 223:1-8 (stating he was not “definitively concluding anything based on the sentence” in report regarding Bessemer-area precincts, that he would “need to empirically investigate,” and “not something I’m using to definitively conclude anything about packing and cracking”); *id.* 224:19-20 (“those that were moved into 2 had a lower black population than otherwise”); *id.* 226:12-25 (applying different rules for what was a “substantively significant” change in District 3 versus District 2); Doc. 90-29 at 70:2-13 (Fairfax) (acknowledging that District 2 did not show a pattern “that black population was added”); *id.* 89:22-90:6 (agreeing he did not “see demographic shifts in District 2 that are evidence of race predominating”); *id.* 140:17-22 (agreeing the Ross Bridge split “divides to some extent on municipal lines”); *id.* 150:4-9 (agreeing that part of Ross Bridge split “ha[s] no population” or “zero to 20 percent BVAP population”); Doc. 90-43 at 114:9-11 (Liu) (admitting he did not perform a regression analysis for District 2); Doc. 90-14 at 132:12-25.

⁶⁸ *See, e.g.*, Doc. 90-29 at 128:12-22, 198:8-15 (Fairfax) (concluding that the Commission “could have” made different choices); Doc. 90-14 at 100:14-16 (Cooper) (agreeing core retention in Illustrative Plan E was lower than the Enacted Plan); *id.* 166:19-25 (same for Plan D); *id.* 180:21-181:14 (agreeing that he did not match the Commission’s +/- goal for Illustrative Plan D but that you would be “stupid” not to see that it was possible); Doc. 90-56 at 198:2-9 (Williamson).

⁶⁹ Addoh-Kondi Doc. 1 ¶¶2, 44-45; McClure Doc. 1 ¶85.

data), even after removing precincts given overpopulation. Doc. 89-1 at 31 (Barber). The Enacted Plan retained 99% of the existing District 3. *Id.* at 7, tbl. 1.

a. Changed District 3 precincts. District 3 retained all existing precincts except for the Bessemer and Homewood precincts added to re-populate District 2 (*supra*, II.B.2.c) and the Dolomite and Minor Fire Station precincts added to re-populate District 1 (*supra*, II.B.1.c). *See* Doc. 89-1 at 32, fig. 12 (Barber). For the reasons discussed above, Plaintiffs fail to account for alternative, nonracial explanations for the movement of these precincts.⁷⁰ They have therefore failed to establish that race predominated. *See Alexander*, 144 S. Ct. at 1235.

District 3 added precincts with obvious nonracial explanations. Noted above, an 89-person precinct (*Brookside, Precinct 3280*) was moved from District 1 to District 3 after voters complained about the drive-time to their old precinct location. Doc. 89-1 at 12-13 (Barber). Additionally, the Enacted Plan moved a portion of the Warrior Storm Shelter Precinct (*3285/4130*) from District 4 to District 3, so that the district line now follows I-65. *Id.* at 33. Only Dr. Williamson suggests that these

⁷⁰ Doc. 90-29 at 170:4-7 (Fairfax) (following I-65); *id.* 173:19-21 (ignoring differences in population between precincts); Doc. 90-56 at 102:25-103:4 (Williamson) (explaining he did not “analyze whether the districts are explainable for reasons other than race”); *id.* 114:2-9 (ignoring racial distribution within each district); *id.* 219:19-220:2 (“agnostic” to population differences in Bessemer); *id.* 220:3-17 (deciding different communities of interest in Bessemer area was “superfluous” to analysis); *id.* 234:6-17 (ignoring municipal boundaries in Dolomite area); *id.* 235:21-236:7 (ignoring population differences in Dolomite precinct); *id.* 195:10-11 (didn’t “consider alternative factors”).

changes are evidence of racial gerrymandering.⁷¹ But he also testified that he “did not consider alternative factors” to explain the districts and his “analysis was exclusively limited to race.” Doc. 90-56 at 102:25-103:4, 195:10-11 (Williamson). His analysis, based only on a comparison of resulting racial demographics alone, cannot answer whether race predominated over nonracial criteria.

b. Plaintiffs’ alternatives and contrary statistical evidence. As Dr. Barber showed using Dr. McCartan’s Simulation Set 5, every one of Plaintiffs’ alternatives for District 3 “is an extreme outlier” from 120,000 neutrally drawn simulations. Doc. 89-2 at 3 & tbl. 1 (Barber). Shown above (p.28), they inflate the district’s BVAP well beyond simulations accounting for core retention. As for District 3 in the Enacted Plan, Dr. McCartan’s Simulation Set 5 illuminates that Plaintiffs’ criticism of the district’s BVAP is in fact a criticism of District 3’s core retention; only by abandoning that nonracial redistricting priority could Plaintiffs produce a District 3 with greater BVAP.⁷²

⁷¹ Doc. 89-15 at 7 (Williamson); *compare* Doc. 90-29 at 170:4-10 (Fairfax) (agreeing that the Warrior-area change was “irrelevant” to racial gerrymandering analysis).

⁷² Doc. 90-29 at 197:20-21 (Fairfax) (agreeing he doesn’t “have an Illustrative Plan that prioritizes core retention”); Doc. 90-14 at 100:14-16, 166:19-25 (Cooper) (agreeing both Illustrative Plan D and E have lower core retention than the Enacted Plan); *id.* 102:23-103:5 (agreeing that approximately 175,427 more people were retained in their existing district in the Enacted Plan compared to Illustrative Plan E); *see also* Doc. 90-14 at 119:11-14, 124:15-25, 145:10-15 (Cooper).

Similarly, when Dr. Williamson revised his analysis comparing precincts that remained in District 3 between 2013 and 2021 and those moved out, he concluded that there was *not* a statistically significant difference between the two groups.⁷³ Dr. Williamson testified that did not change his conclusions because it was only “one piece of evidence,”⁷⁴ but his remaining evidence “focused on ... purely a VTD by race” and not “alternative factors” that could explain the Enacted Plan.⁷⁵

4. District 4. Plaintiffs claim that District 4 is racially gerrymandered and should have more Black voters.⁷⁶ District 4 was 22.4% BVAP in the 2013 Plan (using 2010 Census data) and grew to 25.7% in the Enacted Plan (using 2020 Census data), even after removing precincts given overpopulation. Doc. 89-1 at 34 (Barber). The Enacted Plan retained 96.4% of the existing district. *Id.* at 7, tbl. 1. All existing precincts remained in District 4 except for Center Point-area precincts added to repopulate District 1 (*supra*, II.B.1.c) and the portion of the Warrior precinct added to District 3 (*supra*, II.B.3.a). *See id.* at 36, fig. 14. To return Districts 4 and 5 to +/-1% of ideal population deviation, a precinct was moved from District 5 to District 4 (*Hope Community Church, Precinct 4125*). Plaintiffs have not contested that

⁷³ Doc. 90-56 at 181:7-18 (Williamson) (“one would say that this particular test does not provide evidence in support of the underlying hypothesis” that race was correlated with movement of precincts out of districts); *see* Doc. 89-16 at 4 (Williamson).

⁷⁴ Doc. 90-56 at 124:7-12, 125:1-3 (Williamson).

⁷⁵ *See, e.g.*, Doc. 90-56 at 194:4-5, 195:6-11 (Williamson).

⁷⁶ Addoh-Kondi Doc. 1 ¶¶44-45; McClure Doc. 1 ¶87.

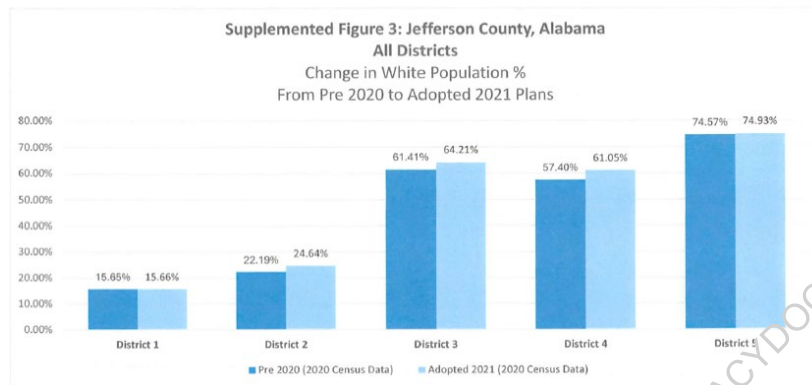
precinct is evidence of gerrymandering. *Id.* at 35. For the reasons stated above, Plaintiffs have not created a genuine issue of fact that race predominated in the changes to District 4.

5. District 5. Plaintiffs claim that District 5 is racially gerrymandered and should have more Black voters.⁷⁷ District 5 was 11.0% BVAP in the 2013 Plan (using 2010 Census data) and grew to 14.0% in the Enacted Plan (using 2020 Census data), even after removing precincts given overpopulation. Doc. 89-1 at 37 (Barber). The Enacted Plan retained 100% of the existing District 5, except for precincts shed to District 2 (*supra*, II.B.2.c) and one precinct to District 4 (*supra*, II.B.4). *See id.* at 7, tbl. 1. More white population was moved out of District 5 than any other district, including overwhelmingly white precincts moved from District 5 to District 2.⁷⁸ Those changes had the effect of decreasing District 2's BVAP and increasing District 5's. Plaintiffs' claim of racial gerrymandering "is blatantly contradicted by the record." *Scott*, 550 U.S. at 380.

⁷⁷ Addoh-Kondi Doc. 1 ¶¶44-45; McClure Doc. 1 ¶89.

⁷⁸ Doc. 89-7 at 21, tbl. 7 (Fairfax); Doc. 90-35 (Fairfax); Doc. 89-1 at 38 (Barber); *see, e.g.*, Doc. 90-56 at 160:9-20, 191:18-192:1 (Williamson) (agreeing "more white voters are moved into district 2"); Doc. 90-29 at 172:8-14, 173:10-174:1, 174: 2-5 (Fairfax).

None of Plaintiffs’ experts could explain why District 5 is a racial gerrymander. For example, Mr. Fairfax’s sole explanation was that “District 5 increased population percentage of the white population”—by a meager 0.36%—but all districts,



Doc. 90-36 (Fairfax)

including Districts 1 and 2, increased in white population (left).⁷⁹ Similarly, Mr. Cooper testified that District 5 “is something of a community of interest” and that parts of District 5 are fairly

compact with “regularly shaped” municipal boundaries.⁸⁰ Finally, even if the resulting BVAP of District 5 alone were probative of racial predominance, Plaintiffs’ alternatives for District 5 tended to have the same or *lower* BVAP than the Enacted Plan. *See* Doc. 89-2 at 4, fig. 1 (Barber).

*

Plaintiffs’ “evidentiary burden” of proving that race predominated is “especially stringent.” *Alexander*, 144 S. Ct. at 1236. The Court “cannot rule out core retention” or other nonracial criteria “as [other] plausible explanation[s]” for the district lines. *Id.* at 1245. As such, the “presumption of legislative good faith directs [the Court]

⁷⁹ Doc. 89-7 at ¶48 & fig. 3 (Fairfax); Doc. 90-29 at 72:17-22, 84:22-85:4 (Fairfax).

⁸⁰ Doc. 90-14 at 123:4-7, 138:25-139:1-3 (Cooper).

to draw the inference that cuts in the [lawmakers'] favor.” *Id.* at 1235-36. Plaintiffs cannot meet their burden at summary judgment to show that there is a genuine issue of material fact that any one district is “unexplainable on grounds other than race.” *Id.* at 1248 (quoting *Shaw I*, 509 U.S. at 644).

CONCLUSION

For these reasons, the Court should grant the Commission’s motion for summary judgment.

DATED: June 7, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2024, I served the foregoing document with the Clerk of Court using the Court's ECF system, thereby serving all counsel who have appeared in this case.

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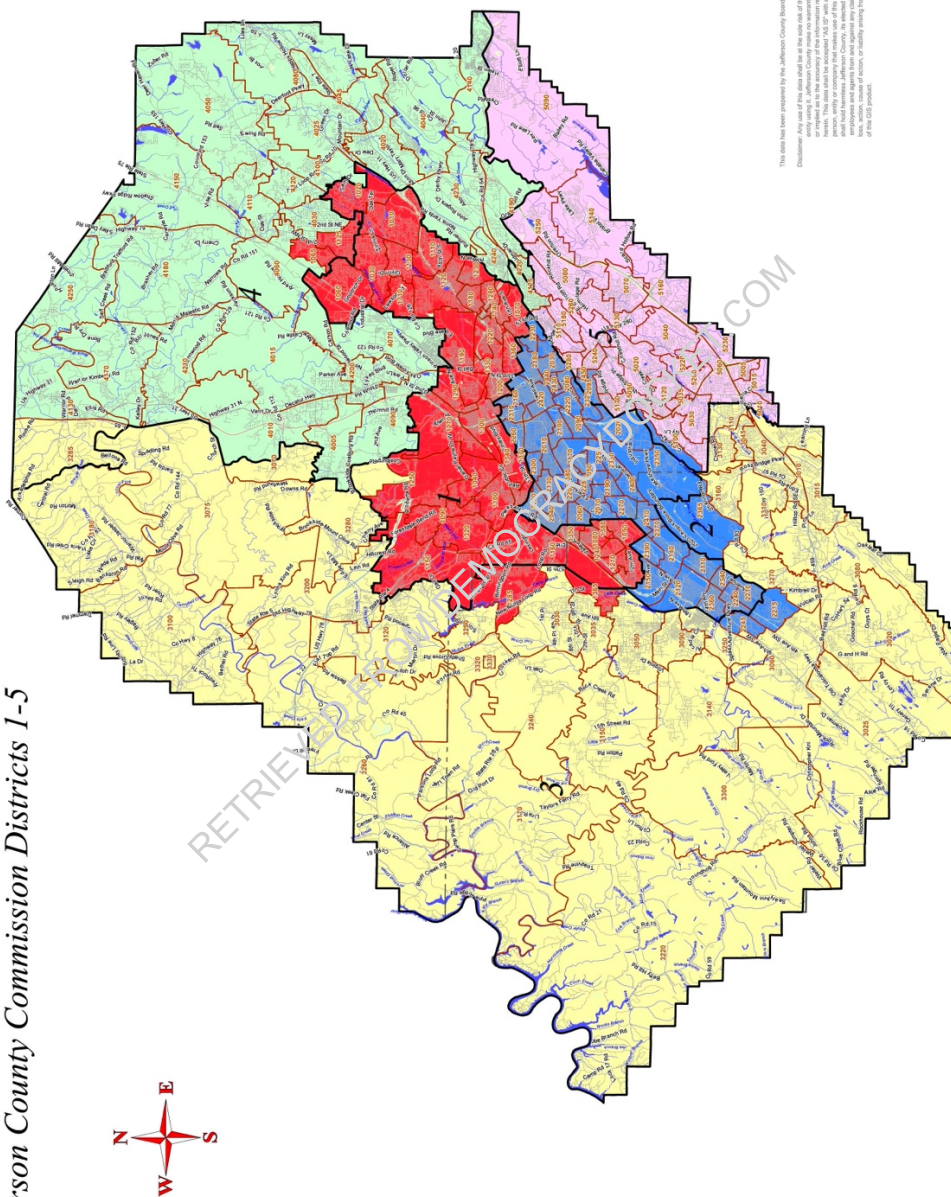
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APPENDIX A

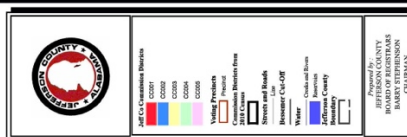
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Jefferson County Commission Districts 1-5



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