

VOTING RIGHTS IN ALABAMA, 2006 TO 2022

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I. INTRODUCTION

Alabama is the birthplace of the Voting Rights Act of 1965 (“VRA”).¹ In the decades leading up to the passage of the VRA, the State of Alabama and local officials enforced a series of racially discriminatory laws and policies, including literacy tests, good moral character tests, and voucher (identification) requirements, with the intent and effect of locking Black Alabamians out of the political process.² Efforts by Black civil rights activists to register themselves or other Black Americans to vote were often met with brutal resistance, violence, and reprisals from the State and local officials.³ While the NAACP Legal Defense and Educational Fund, Inc. (“LDF”) and local civil rights activists won several major voting rights cases in the 1940s

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¹ 52 U.S.C. § 10101.

² See, e.g., Wayne Flynt, *Alabama’s Shame: The Historical Origins of the 1901 Constitution*, 53 ALA. L. REV. 67, 72–73 (2001) (“The majority report proposed a plan that would clearly result in massive disfranchisement . . .”); ARI BERMAN, GIVE US THE BALLOT: THE MODERN STRUGGLE FOR VOTING RIGHTS IN AMERICA 17 (2015) (“Segregationist whites, known as Redeemers, regained power and quickly targeted black voters, first through violence and fraud and then via devices like literacy and good character tests, poll taxes, and stringent residency requirements.”).

³ GARY MAY, BENDING TOWARD JUSTICE: THE VOTING RIGHTS ACT AND THE TRANSFORMATION OF AMERICAN DEMOCRACY 87 (2013).

and 1950s, the ability to freely register to vote and vote remained out of reach for most Black people in Alabama.⁴

The events of “Bloody Sunday” on March 7, 1965 in Selma, Alabama marked a turning point in the struggle for voting rights for people of color in the United States. On that day, hundreds of Black civil rights activists, including future U.S. Representative John Lewis, were walking across the Edmund Pettus Bridge when they were savagely beaten by Alabama state troopers and vigilantes.⁵ This brutal attack by state troopers on peaceful activists was broadcast on national television, and the images galvanized public support for voting rights legislation.⁶ Bloody Sunday served as a catalyst for Congress’s rapid introduction and passage of the VRA on August 6, 1965.⁷

Among other provisions, Section 2 of the VRA prohibits racial discrimination in voting,⁸ and Section 5 required certain states with a history of discrimination in voting to seek permission, or “preclearance,” from the federal government before making changes to any voting related laws.⁹

Between the passage of the VRA in 1965 and the U.S. Supreme Court’s 2013 ruling in *Shelby County v. Holder*, which paralyzed the VRA’s Section 5 preclearance provisions,¹⁰ the VRA was used thousands of times to stop or discourage voting discrimination in Alabama and elsewhere.¹¹ The enactment and enforcement of the VRA led directly to large increases in

4 U.W. Clemon & Bryan K. Fair, *Making Bricks Without Straw: The NAACP Legal Defense Fund and the Development of Civil Rights Law in Alabama 1940-1980*, 52 ALA. L. REV. 1121, 1133–38 (2001).

5 MAY, *supra* note 3, at 87.

6 *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2353 (2021) (Kagan, J., dissenting).

7 *Id.*

8 52 U.S.C. § 10301; *see also Brnovich*, 141 S. Ct. at 2343 (“Section 2 of the Voting Rights Act provides vital protection against discriminatory voting rules”); *Thornburg v. Gingles*, 478 U.S. 30, 45 n.10 (1986) (“Section 2 prohibits all forms of voting discrimination, not just vote dilution.”).

9 52 U.S.C. § 10304; *see also* Brian L. Porto, Annotation, *What Changes in Voting Practices or Procedures Must Be Precleared Under § 5 of the Voting Rights Act of 1965 (42 U.S.C.A. § 1973c)—Supreme Court Cases*, 146 A.L.R. Fed. 619 (1998) (“Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C.A. § 1973c), requires a ‘covered jurisdiction’ under § 4(a) of the Act (42 U.S.C.A. § 1973b) to refrain from implementing any new ‘voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964’ unless it first obtains preclearance for the change from the United States Attorney General or the United States District Court for the District of Columbia.”).

10 *Shelby County v. Holder*, 570 U.S. 529, 557 (2013).

11 *Id.* at 571–72, 577 (Ginsburg, J., dissenting).

voter registration and electoral representation for Black people at every level of Alabama government.¹²

Despite this progress, racial discrimination in voting remains a persistent and significant problem in Alabama today. Federal courts and the U.S. Department of Justice have repeatedly found that the State of Alabama or its political subdivisions have engaged in intentional discrimination or otherwise violated the VRA. Since the *Shelby County* decision, Alabama is the only state in the nation where federal courts have ordered more than one jurisdiction—the City of Evergreen¹³ and the Jefferson County School Board¹⁴—to submit to preclearance under Section 3(c) of the VRA. Under Section 3(c), a federal court that finds that a state or jurisdiction engaged in intentional racial discrimination can temporarily require that state or jurisdiction to seek preclearance before imposing certain new voting-related changes.¹⁵

Today, in the wake of the loss of Section 5 preclearance and the inability of Section 2 to guarantee immediate relief from new discriminatory voting rules, voters lack a dependable means of stopping discriminatory rules *before* those rules go into effect. Challenges to new and old voting restrictions continue to suffer defeat in the courts; voting across Alabama remains extremely racially polarized; and Black candidates have only very rarely won elections in majority-white areas of the state. For these reasons and more, this report demonstrates the need for Congress to immediately enact and expand the protections of the VRA and restore the preclearance provisions.

II. THE IMPACT OF *SHELBY COUNTY V. HOLDER* ON ALABAMA

From the enactment of the VRA in 1965 until 2013, Alabama was one of nine states that were fully covered under the temporary provisions of the VRA and the formula in Section 4(a).¹⁶ Section 4(a) identified those states and political subdivisions with a history of discrimination in voting that were subject to the preclearance provision of Section 5 and federal observer

¹² *Id.* at 547–48 (citing H.R. REP. NO. 109-487 at 12,18 (2006)).

¹³ *Allen v. City of Evergreen*, No. 13-0107-CG-M, 2014 WL 12607819 (S.D. Ala. Jan. 13, 2014).

¹⁴ *Jones v. Jefferson Cnty. Bd. of Educ.*, No. 2:19-CV-01821-MHH, 2019 WL 7500528 (N.D. Ala. Dec. 16, 2019).

¹⁵ 52 U.S.C. § 10302.

¹⁶ 52 U.S.C. § 10303 (*invalidated by* *Shelby County, v. Holder*, 570 U.S. 529 (2013)).

provisions of the VRA.¹⁷ Congress last reauthorized the temporary provisions of the VRA in 2006.¹⁸

Section 5 required covered states or political subdivisions to submit any proposed changes related to voting or electoral procedures to either to the U.S. Attorney General or to a three-judge panel of the U.S. District Court for the District of Columbia for “preclearance” review before the state or subdivision could enforce its proposed change.¹⁹ The state or subdivision bore the burden of proving that the change did not have the “purpose [and would not] have the effect of denying or abridging the right to vote on account of race,” color, or language minority group status.²⁰

The federal observer provisions enabled the U.S. Attorney General to send observers to monitor polling places and vote counting activities anywhere in Alabama that had been certified for coverage.²¹ The U.S. Attorney General could certify a jurisdiction covered under Section 4(a) under one of two circumstances: (1) if the U.S. Attorney General has received “written meritorious complaints from residents, elected officials, or civic participation organizations that efforts to deny or abridge the right to vote” on account of race, color, or membership in a language minority group are likely to occur;²² or (2) the U.S. Attorney General determined that certification was necessary to enforce the guarantees of the Fourteenth or Fifteenth Amendments to the U.S. Constitution.²³

In *Shelby County v. Holder*, Shelby County, Alabama filed an action against the U.S. Attorney General challenging the constitutionality of Sections 4(b) and 5—the preclearance provisions—of the VRA.²⁴ The county argued that advances in minority voting rights, coupled with the fact that only certain states and counties were required to obtain preclearance, rendered these provisions unconstitutional.²⁵ The district court in Washington, D.C. had concluded that both sections were constitutional and upheld the VRA in its

¹⁷ *Id.*

¹⁸ Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. 109-246, 120 Stat. 577 (2006).

¹⁹ 52 U.S.C. § 10304.

²⁰ *Id.*

²¹ 52 U.S.C. § 10305.

²² 52 U.S.C. § 10305(a)(2)(A).

²³ 52 U.S.C. § 10305(a)(2)(B).

²⁴ *Shelby County*, 570 U.S. at 540–41.

²⁵ *Id.* at 546–47.

entirety.²⁶ The U.S. Court of Appeals for the District of Columbia affirmed that decision, and ruled that Congress acted within its powers when reauthorizing both Sections.²⁷ In June 2013, however, the U.S. Supreme Court determined that Section 4(b) was unconstitutional in a 5-4 decision. Chief Justice John Roberts wrote the majority opinion and held that, while voting discrimination exists, Section 4(b) identified jurisdictions for preclearance and imposed burdens based on voter registration and turnout data from the 1960s and 1970s. The Court ruled that the Section 4(b) coverage provision formula was not responsive to present conditions in the covered jurisdictions.²⁸ The Court noted that Congress could have updated the Section 4(b) coverage provision when the VRA was reauthorized in 2006, but it failed to do so.²⁹ The *Shelby County* decision did not rule Section 5 unconstitutional, but the enforcement of Section 5 is impossible in the absence of Section 4(b).³⁰ Nearly a decade later, the negative impact of this decision on Black voters continues to reverberate across the country.

III. ALABAMA DEMOGRAPHICS

At the time of the 2010 Census, Alabama had a total population of 4,779,736, of whom 3,204,402 (67.04%) were non-Hispanic white and 1,244,437 (26.04%) were non-Hispanic Black.³¹ The demographic makeup of the remainder of the population at that time was primarily divided among Hispanic (3.88%), American Indian (0.04%), and Asian (0.54%) residents.³² Persons who identified as “Any Part Black” (including Hispanic Black or multiple races) during the 2010 Census numbered 1,281,118 (26.80%).³³

According to the U.S. Census Bureau’s 2019 American Community Survey, the citizen voting age population of Alabama is 3,731,336, of whom 68.5% are non-Hispanic white, 26.7% are single-race Black, and 2.2% are

²⁶ *Shelby County v. Holder*, 811 F. Supp. 2d 424 (D.D.C. 2011).

²⁷ *Shelby County v. Holder*, 679 F.3d 848 (D.C. Cir. 2012).

²⁸ *Shelby County*, 570 U.S. at 549–51, 557.

²⁹ *Id.* at 557.

³⁰ *See id.* at 559 (Thomas, J., concurring).

³¹ U.S. CENSUS BUREAU, ALABAMA: 2010, SUMMARY POPULATION AND HOUSING CHARACTERISTICS 60–61 (2012), <https://www2.census.gov/library/publications/2012/dec/cph-1-2.pdf> [<https://perma.cc/W469-3LJL>].

³² *Id.*

³³ *Id.*

Hispanic.³⁴ Despite the significant Black and Hispanic population, no minority candidate has won election to a statewide office in Alabama in decades.³⁵

IV. PRE-2006 VOTING DISCRIMINATION IN ALABAMA

In the decades before and after the passage of the Voting Rights Act of 1965, Black Alabamians were on the frontlines of the battle to secure and protect the right to vote for all Americans.

Following the Thirteenth Amendment's emancipation of Black people in 1865 and the passage of the Fifteenth Amendment in 1870, Black men voted freely under the protection of federal troops.³⁶ In 1874, however, the former Confederates and white supremacists in the Democratic Party regained power in Alabama and began to use violence and fraud to repress and control the Black vote.³⁷ In the 1890s, in response to increased Black political activity and a stated desire to combat fraud, Alabama passed the "Sayre Law."³⁸ The Sayre Law included an onerous biennial voter registration requirement, a voter identification requirement whereby voters had to display their registration certificates at the polls, and strict limits on assisting illiterate voters.³⁹

While the Sayre Law proved successful at disenfranchising Black voters, it was the 1901 Constitution of Alabama that sounded the death knell for Black voting.⁴⁰ The 1901 Constitution conditioned the right to vote on land ownership and employment and instituted a poll tax, a literacy test, a criminal

³⁴ U.S. Census Bureau, *Citizen, Voting-Age Population by Selected Characteristics (2019: ACS 1-Year Estimates)*, <https://data.census.gov/cedsci/table?q=S2901&g=0400000US01&tid=ACSST1Y2019.S2901&hidePreview=true> [https://perma.cc/QE3G-Q7CU] (last visited July 23, 2021).

³⁵ See *Ala. State Conf. of NAACP v. Alabama*, No. 2:16-CV-731-WKW, 2020 WL 583803, at *5 (M.D. Ala. Feb. 5, 2020) ("With the exception of two Supreme Court justices in the 1980s and 1990s, no African-American candidate has ever been elected to statewide office in Alabama.").

³⁶ J. MORGAN KOUSSER, *THE SHAPING OF SOUTHERN POLITICS* 238 (1974); MALCOLM COOK MCMILLAN, *CONSTITUTIONAL DEVELOPMENT IN ALABAMA 1798-1901: A STUDY IN POLITICS, THE NEGRO AND SECTIONALISM*, at i-iii (1910) (Reprint Co. 1978); see also *People First of Ala. v. Merrill* (*People First II*), 491 F. Supp. 3d 1076, 1104-05 (N.D. Ala. 2020).

³⁷ *Harris v. Siegelman*, 695 F. Supp. 517, 522 (M.D. Ala. 1988).

³⁸ *Id.*; see also *People First II*, 491 F. Supp. 3d at 1105 ("This reform measure followed reports of rampant voter fraud among Democrats seeking to disrupt a fledging alliance between poor populists and poorer Black voters." (internal quotation marks omitted)).

³⁹ See *Bolden v. City of Mobile*, 542 F. Supp. 1050, 1062 (S.D. Ala. 1982).

⁴⁰ *People First II*, 491 F. Supp. 3d at 1105.

disfranchisement rule, and grandfather clauses to fully disfranchise Black voters.⁴¹ By 1902, these devices had led to the near total elimination of Black people from the Alabama electorate.⁴²

Only in the 1940s and 1950s were Black voters able to win some victories against literacy and voucher (or voter identification) tests. These victories often came in response to Black civil rights activism and the international spotlight shone on American racism during the Cold War and the return of Black veterans who had fought against Nazi racism in Europe but could not vote at home.⁴³ In the 1960s, amid the Civil Rights Movement, Black plaintiffs successfully stopped the infamous Tuskegee gerrymander.⁴⁴ The Justice Department and others brought lawsuits to attack the State's efforts to devise new forms of literacy, voucher, and good moral character tests.⁴⁵ With the passage of the Voting Rights Act in 1965, the Justice Department and Black activists now had a powerful tool to block racially discriminatory changes before they could hamper Black voters: Section 5.

The types of intentionally racially discriminatory changes blocked under Section 5 included anti-single shot voting rules, new literacy tests, and candidate qualifications in the 1960s and 1970s, and statewide legislative and

⁴¹ See generally *Underwood v. Hunter*, 730 F.2d 614, 619 & n.9 (11th Cir. 1984) (explaining that “the [suffrage] committee made resort to facially neutral tests that took advantage of differing social conditions. Property tests, literacy tests, residence requirements, the poll tax, and disqualification for conviction of certain crimes all fell into this category” (internal citations and quotation marks omitted)); *Bolden*, 542 F. Supp. at 1062 & n.9 (stating that “[t]he 1901 Constitution, as ratified, contained a plethora of voter qualifications”).

⁴² KOUSSER, *supra* note 36, at 61 tbl.2.3.

⁴³ See, e.g., Library of Congress, *The Civil Rights Act of 1964: A Long Struggle for Freedom*, <https://www.loc.gov/exhibits/civil-rights-act/world-war-ii-and-post-war.html> [<https://perma.cc/N3AW-B4G2>] (last visited July 23, 2021) (“The fight against fascism . . . brought to the forefront the contradictions between America’s ideals of democracy and equality and its treatment of racial minorities.”).

⁴⁴ *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

⁴⁵ See *South Carolina v. Katzenbach*, 383 U.S. 301, 311–12 (1966) (“Grandfather clauses were invalidated in *Guinn v. United States*, 238 U.S. 347 (1915), and *Myers v. Anderson*, 238 U.S. 368 (1915). Procedural hurdles were struck down in *Lane v. Wilson*, 307 U.S. 268 (1939). The white primary was outlawed in *Smith v. Allwright*, 321 U.S. 649 (1944), and *Terry v. Adams*, 345 U.S. 461 (1953). Improper challenges were nullified in *United States v. Thomas*, 362 U.S. 58 (1960). Racial gerrymandering was forbidden by *Gomillion v. Lightfoot*, 364 U.S. 339 (1960). Finally, discriminatory application of voting tests was condemned in *Schnell v. Davis*, 336 U.S. 933 (1949); *Alabama v. United States*, 371 U.S. 37 (1962), and *Louisiana v. United States*, 380 U.S. 145 (1965).” (parallel citations omitted) (case years added)).

congressional redistricting maps in the 1980s and 1990s.⁴⁶ Local changes like discriminatory school district secessions, municipal annexations, municipal redistricting plans, and voter re-identification laws were also blocked in the 1980s and 1990s.⁴⁷

For example, in 1987, the U.S. Supreme Court found that the City of Pleasant Grove—at the time, an all-white racial enclave with a long history of discrimination—failed to demonstrate under Section 5 that its annexation policy was nondiscriminatory.⁴⁸ Pleasant Grove had sought preclearance to annex two likely all-white areas while at the same time refusing to annex a predominantly Black area.⁴⁹ The Court concluded that the city had intentionally sought to “provide for the growth of a monolithic white voting bloc, thereby effectively diluting the black vote in advance” of the then-anticipated growth of the city’s Black population in the coming decades.⁵⁰

In 1998, the Justice Department objected to the Tallapoosa County Commission’s intentionally discriminatory effort to protect a white incumbent by reducing the Black voting age population in a single-member district from 62% to 52%.⁵¹ And, in 2000, the Justice Department objected to the attempt by the City of Alabaster in Shelby County to annex an area containing 179 white voters, which would have eliminated Alabaster’s only majority-Black city council district.⁵²

Beyond Section 5 objections, in the 1980s and 1990s, Black voters, civil rights lawyers, and the Justice Department filed a barrage of litigation under Section 2 of the VRA and the U.S. Constitution. For example, in 1985, the U.S. Supreme Court decided *Hunter v. Underwood*, in which the Court struck down Alabama’s discriminatory misdemeanor disfranchisement law.⁵³

⁴⁶ See, e.g., *Voting Determination Letters for Alabama*, U.S. DEP’T OF JUST., <https://www.justice.gov/crt/voting-determination-letters-alabama> [<https://perma.cc/A78H-N8YY>] (last visited Aug. 2, 2021) (listing voting rights objection letters by the U.S. Department of Justice).

⁴⁷ *Id.*

⁴⁸ *City of Pleasant Grove v. United States*, 479 U.S. 462, 472 (1987).

⁴⁹ *Id.* at 467.

⁵⁰ *Id.* at 471-72.

⁵¹ Letter from Bill Lann Lee, Acting Assistant Att’y Gen., Civ. Rts. Div., to E. Paul Jones (Feb. 6, 1998), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-2000.pdf> [<https://perma.cc/ZWC9-UX2B>].

⁵² Letter from Bill Lann Lee, Acting Assistant Att’y Gen., Civ. Rts. Div., to J. Frank Head (Aug. 16, 2000), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-2010.pdf> [<https://perma.cc/2CVZ-CSTD>].

⁵³ *Hunter v. Underwood*, 471 U.S. 222 (1985).

The next year, in 1986, a federal district court in *Dillard v. Crenshaw County* found that, from the late 1800s to the 1980s, the State Legislature had purposefully manipulated the method of electing local governments as needed to prevent Black citizens from electing their preferred candidates.⁵⁴ The court also found that the state laws requiring numbered posts for nearly every at-large voting system in Alabama had been intentionally enacted to dilute Black voting strength.⁵⁵

Based on these findings, the court expanded the *Dillard* litigation to include a defendant class of 17 county commissions, 28 county school boards, and 144 municipalities who were then employing at-large election systems tainted by the racially motivated general laws.⁵⁶ In a series of settlements, approximately 180 of these jurisdictions adopted new methods of election, including single-member districts, limited voting, and cumulative voting systems, to purge their election systems of this intentional discrimination.⁵⁷

In addition to the *Dillard* litigation, courts in the 1980s ruled against the at-large systems used by the City of Mobile in 1982,⁵⁸ Mobile County's school board in 1983,⁵⁹ Marengo County's commission and school board in 1987,⁶⁰ Dallas County's commission⁶¹ and school board⁶² and the City of Huntsville in 1988,⁶³ and the Madison County commission and its school board in 1989.⁶⁴

Furthermore, in 1988, in *Harris v. Siegelman*, Black voters won a Section 2 lawsuit against state officials challenging their ongoing policy of refusing to appoint Black poll workers and the Sayre Law's restrictions on assistance for

⁵⁴ *Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1357 (M.D. Ala. 1986).

⁵⁵ *Id.* at 1360.

⁵⁶ James Blacksher et al., *Voting Rights in Alabama: 1982–2006*, 17 S. CAL. REV. L. & SOC. JUST. 249, 264–65 (2008).

⁵⁷ *Id.*

⁵⁸ *Bolden v. City of Mobile*, 542 F. Supp. 1050, 1075 (S.D. Ala. 1982).

⁵⁹ *Brown v. Bd. of Sch. Comm'rs of Mobile Cnty.*, 542 F. Supp. 1078, 1107 (S.D. Ala. 1982), *aff'd* 706 F.2d 1103 (11th Cir. 1983), *aff'd* 464 U.S. 1005 (1983) (mem.).

⁶⁰ *United States v. Marengo Cnty. Comm'n*, 643 F. Supp. 232 (S.D. Ala. 1986), *aff'd sub nom. Clark v. Marengo Cnty. Comm'n*, 811 F.2d 610 (11th Cir. 1987) (unpublished table decision).

⁶¹ *United States v. Dallas Cnty. Comm'n*, 850 F.2d 1430, 1432 (11th Cir. 1988).

⁶² *United States v. Dallas Cnty. Comm'n*, 850 F.2d 1433, 1443 (11th Cir. 1988).

⁶³ *Grayson v. Madison Cnty.*, No. 84-V-5770-NE, 1988 U.S. Dist. LEXIS 19684 (N.D. Ala. June 2, 1988).

⁶⁴ *Grayson v. Madison Cnty.*, No. 84-V-5770-NE, 1989 U.S. Dist. LEXIS 19346 (N.D. Ala. Jan. 27, 1989).

illiterate voters.⁶⁵ The court found that both the state policy regarding poll workers and the Sayre Law were the products of intentional discrimination.⁶⁶

In the 1990s and early 2000s, Black voters and the U.S. Department of Justice again filed Section 2 and constitutional litigation, which resulted in rulings or settlements that ended racially discriminatory election practices. These cases included challenges to the redistricting plans for the Autauga County Board of Education in 1992,⁶⁷ Barbour County Commission in 1994,⁶⁸ the Tallapoosa County Commission also in 1994,⁶⁹ and the City of Greensboro in 1997,⁷⁰ selective annexations in the City of Foley in 1995,⁷¹ and Dallas County's primary election rules in 2004.⁷²

Even after 2006, and as described in more detail below, Alabama continued its tradition of attempting to keep people of color—particularly its Black citizens—“economically, socially, and politically downtrodden, from the cradle to the grave.”⁷³ In the last fifteen years, federal courts have entered orders that seek to address other acts of discrimination by Alabama cities and

⁶⁵ Harris v. Siegelman, 695 F. Supp. 517 (M.D. Ala. 1988).

⁶⁶ *Id.* at 526.

⁶⁷ See Medders v. Autauga Cnty. Bd. of Educ., 858 F. Supp. 1118, 1122 (M.D. Ala. 1994) (describing a 1992 court-approved settlement of a Section 2 claim).

⁶⁸ See Straw v. Barbour Cnty., 864 F. Supp. 1148, 1151 (M.D. Ala. 1994) (noting the court's prior finding that “the county commission had intentionally split the Town of Clayton between two districts for unnecessary and unjustified racially discriminatory reasons, in violation of the fourteenth amendment”).

⁶⁹ Consent Judgment and Decree, United States v. Tallapoosa Cnty., No. 3:93-cv-01362, Docket Entry No. 14 (M.D. Ala. Apr. 22, 1994).

⁷⁰ Dillard v. City of Greensboro, 956 F. Supp. 1576 (M.D. Ala. 1997).

⁷¹ Dillard v. City of Foley, 926 F. Supp. 1053 (M.D. Ala. 1995).

⁷² Order, Foster v. Jones, No. 03-0574, (S.D. Ala. Feb. 4, 2004), ECF No. 33; *see also* Foster v. Jones, No. 03-0574, 2004 WL 7344991, at *1–2 (S.D. Ala. June 17, 2004) (noting the settlements with the Dallas County Probate Judge and Dallas County Sheriff to resolve allegations of a racially discriminatory conspiracy to dilute the Black vote).

⁷³ Dillard v. Crenshaw Cnty., 640 F. Supp. 1347, 1357 (M.D. Ala. 1986) (citing Village of Arlington Heights v. Metropolitan Housing Dev. Corp., 97 S.Ct. 555, 564 (1977)).

counties, like dilutive voting systems,⁷⁴ voter purges,⁷⁵ selective annexations,⁷⁶ and the failure to appoint Black poll workers.⁷⁷ In 2010, for instance, a cabal of prominent state legislators were caught on tape deriding Black voters as “illiterate” and “Aborigines” while plotting to suppress Black voter turnout in the 2010 elections.⁷⁸ In 2017, three federal judges blocked the Alabama legislature from employing racial gerrymanders, which were limiting Black voters’ influence in state legislative districts.⁷⁹ In 2016, Alabama was stopped from trying to illegally bypass the National Voter Registration Act by attempting to require documentary proof-of-citizenship to register to vote.⁸⁰ In 2020, a federal court enjoined Alabama from enforcing certain absentee voting requirements amid the COVID-19 pandemic for the November 3, 2020 election.⁸¹ And, in 2022, a unanimous three-judge court found that Alabama’s congressional redistricting plan violated the VRA,⁸² although the Supreme Court stayed remedial relief before the 2022 elections.⁸³

⁷⁴ Jones v. Jefferson Cnty. Bd. of Educ., No. 2:19-cv-01821, 2019 WL 7500528, at *3–4 (N.D. Ala. Dec. 16, 2019) (enjoining the use of a multimember district that was found to violate the Fourteenth Amendment); Ala. State Conf. of NAACP v. City of Pleasant Grove, No. 2:18-cv-02056, 2019 WL 5172371 (N.D. Ala. Oct. 11, 2019) (entering a consent order altering the city’s method of election and adopting a remedial system using cumulative voting).

⁷⁵ See Allen v. City of Evergreen (*Allen II*), No. 1:13-cv-107, 2014 WL 12607819, at *4 (S.D. Ala. Jan. 13, 2014) (granting summary judgment for the plaintiffs’ intentional discrimination claims, ordering a special election, and imposing preclearance); see also Pls.’ Mot. for Summ. J., at ¶¶ 39–41, Allen v. City of Evergreen, No. CIV.A. 13-107 (S.D. Ala. Aug. 1, 2013) (alleging that the existence of an entirely separate list of “Problem Voters” list that threatens the eligibility of those listed).

⁷⁶ See United States v. City of Calera (*Calera I*), No. CV-08-BE-1982-S, 2008 WL 11512029, at *3 (N.D. Ala. Oct. 29, 2008) (enjoining the defendants from administering any election until meeting preclearance of Section 5 of the Voting Rights Act) (three-judge court).

⁷⁷ See City of Pinson v. Holder, No. 1:12-cv-255, 2012 WL 13210378, at *9 (D.D.C. Apr. 20, 2012) (“For the 2010 federal general election, seventeen poll workers were assigned to these sites. All of the poll workers at both sites were white.”) (three-judge court).

⁷⁸ United States v. McGregor, 824 F. Supp. 2d 1339, 1345 (M.D. Ala. 2011).

⁷⁹ See Ala. Legis. Black Caucus v. Alabama, 231 F. Supp. 3d 1026, 1348 (M.D. Ala. 2017) (enjoining the legislature from using twelve districts that were found to be drawn predominantly based on race and failed to satisfy strict scrutiny) (three-judge court).

⁸⁰ See League of Women Voters v. Newby, 838 F.3d 1, 14–15 (D.C. Cir. 2016) (holding that the harm to public interest greatly outweighs any state interest in enjoining the use of documentary proof of citizenship requirements on federal voter registration forms).

⁸¹ See People First of Ala. v. Merrill (*People First II*), 491 F. Supp. 3d 1076, 1091–93 (N.D. Ala. 2020) (holding that the plaintiffs met their burden under the VRA and enjoining the witness requirement of absentee voting for people with a higher risk of becoming seriously ill from COVID-19).

⁸² Singleton v. Merrill, 582 F. Supp. 3d 924, 936 (N.D. Ala. 2022) (three judge court).

⁸³ Merrill v. Milligan, 142 S. Ct. 879 (2022).

This discrimination in voting parallels Alabama officials' acts of discrimination in nearly every other area of Black and Latinx people's lives. As children, they still face racist exclusion from schools,⁸⁴ segregated classrooms,⁸⁵ discriminatory student discipline policies,⁸⁶ and even discrimination in school meal programs.⁸⁷ As adults, Black and Latinx people encounter further discrimination in state employment,⁸⁸ housing,⁸⁹ access to transportation services,⁹⁰ and higher education.⁹¹ Black people in

⁸⁴ See *Stout v. Jefferson Cnty. Bd. of Educ.*, 882 F.3d 988, 1006–13 (11th Cir. 2018) (enjoining a predominately white municipal school system's intentionally discriminatory attempt to separate from the more racially diverse county school system); *Hispanic Int. Coal. of Ala. v. Governor of Ala.*, 691 F.3d 1236, 1244–49 (11th Cir. 2012) (enjoining a state law that “increased likelihood of deportation or harassment” for undocumented students and “significantly deters” their enrollment in school in contravention of the Fourteenth Amendment).

⁸⁵ See Consent Agreement at 2, *Johnson v. Troy City Bd. of Educ.*, No. 2:13-cv-579 (M.D. Ala. Dec. 10, 2013), ECF No. 24 (settling allegations that a school district's policies had resulted in racially segregated homerooms).

⁸⁶ See *Hereford v. Huntsville Bd. of Educ.*, No. 5:63-cv-00109, 2015 U.S. Dist. LEXIS 52068, at *3–4, 8 (N.D. Ala. Apr. 21, 2015) (finding that a school district imposed more serious disciplinary consequences for black students than white students for similar behavior).

⁸⁷ See *Stout v. Jefferson Cnty. Bd. of Educ. (City of Leeds Bd. of Educ.)*, No. 2:17-MC-681, 2020 WL 1983331, at *3–4 (N.D. Ala. Apr. 27, 2020) (agreeing with the Plaintiffs that the cancellation of a meal program had a disparate impact on Black students).

⁸⁸ See, e.g., *Weatherly v. Ala. State Univ.*, 728 F.3d 1263 (11th Cir. 2013) (affirming a finding of racial discrimination in employment against a state university); *Brown v. Ala. Dep't of Transp.*, 597 F.3d 1160 (11th Cir. 2010) (affirming an award of backpay to resolve racial discrimination in promotions by the state transportation agency); *Allen v. Ala. State Bd. of Educ.*, 190 F.R.D. 602 (M.D. Ala. 2000) (approving a settlement of a class action challenging discriminatory state teacher certification tests).

⁸⁹ *Cent. Ala. Fair Hous. Ctr. v. Magee*, 835 F. Supp. 2d 1165, 1185 (M.D. Ala. 2011), *vacated as moot sub nom. Cent. Ala. Fair Hous. Ctr. v. Comm'r, Alabama Dep't of Revenue*, No. 11-16114-CC (11th Cir. May 17, 2013). The Eleventh Circuit vacated the district court order as moot after the State amended Alabama Code § 31-13-29 in May 2012 in a manner that ensured that there is “no possibility that the challenged code section, as amended, will be applied to future mobile home transactions in Alabama.” *Cent. Ala. Fair Hous. Ctr. v. Comm'r, Alabama Dep't of Revenue*, No. 11-16114-CC, 2013 WL 2372302, at *1 (11th Cir. May 17, 2013). But the Eleventh Circuit did not overturn the district court's findings of discrimination on the merits.

⁹⁰ See MEMORANDUM OF AGREEMENT BETWEEN THE U.S. DEPARTMENT OF TRANSPORTATION AND THE ALABAMA LAW ENFORCEMENT AGENCY (Dec. 22, 2016), https://www.transportation.gov/sites/dot.gov/files/docs/ALEA%20US%20DOT%20Signed%20MOA_0.PDF [<https://perma.cc/2BVC-TY5B>] (finding that the State's closure of driver licensing offices in the Black Belt region, where most counties have a majority of black citizens, violated the Civil Rights Act).

⁹¹ See *Knight v. Alabama*, 787 F. Supp. 1030 (N.D. Ala. 1991) (finding that the admissions and other policies of Alabama's public universities discriminated against Black students), *aff'd in part, rev'd in part, vacated in part*, 14 F.3d 1534 (11th Cir. 1994), *remanded* 900 F. Supp. 272, 374–75 (N.D. Ala. 1995).

particular experience discrimination and mistreatment on both sides of the legal system. Alabama prosecutors have systemically excluded Black people from juries.⁹² And the Black people who are disproportionately confined to Alabama's prisons and jails have endured unconstitutionally cruel circumstances reminiscent of slavery, including chain gangs,⁹³ inhumane hitching posts,⁹⁴ and jails akin to the "holding units of slave ships."⁹⁵

Unfortunately, today, as in the decades before 2006, racial discrimination in voting and elsewhere remains a pervasive reality for Black voters and other people of color across Alabama.

V. VOTING DISCRIMINATION IN ALABAMA SINCE 2006

As in the period before the 2006 reauthorization of the temporary provisions of the VRA, Alabama today remains a hotbed of voting discrimination. Even the brief period between the 2006 reauthorization and *Shelby County* in 2013 reveals stunning evidence of continued intentional racial discrimination against Black voters by the Alabama state legislature and local jurisdictions.

But the *Shelby County* ruling unleashed a further torrent of discriminatory state and local voting changes. Although people of color have found some relief through Section 2 and constitutional challenges, traditional litigation has failed to stop many discriminatory changes that would have been subject to Section 5 preclearance, such as new statewide voter ID requirements and modifications to local election systems.

⁹² See, e.g., *Adkins v. Warden, Holman CF*, 710 F.3d 1241, 1258 (11th Cir. 2013) (finding purposeful discrimination against Black jurors); *McGahee v. Ala. Dep't of Corr.*, 560 F.3d 1252, 1257–59 (11th Cir. 2009) (finding that the State intentionally discriminated in striking twenty four potential Black jurors in jury selection); *Hall v. Thomas*, 977 F. Supp. 2d 1129, 1162–63 (S.D. Ala. 2013) (finding that the State intentionally discriminated by striking Black jurors in death penalty case); *Stephens v. Haley*, 823 F. Supp. 2d 1254, 1276–78 (S.D. Ala. 2011) (finding that it "blinks reality" to deny that the State's striking of twenty-one potential Black jurors was not intentional discrimination).

⁹³ *Austin v. Hopper*, 15 F. Supp. 2d 1210, 1215–25 (M.D. Ala. 1998) (reviewing the psychological pain of inmates subjected to "chain gang" labor on the highway as their friends and family could be driving by).

⁹⁴ *Hope v. Pelzer*, 536 U.S. 730, 733–35 (2002) (describing the multiple occasions of which the plaintiff was tied to the posts for hours on end, in the sun, handcuffed, with no water).

⁹⁵ *Maynor v. Morgan Cnty.*, 147 F. Supp. 2d 1185, 1186 (N.D. Ala. 2001) (finding that the jail was so overcrowded that it violated the Constitution).

A. *Intentional Discrimination and VRA Violations by the State*

1. *United States v. McGregor*

In 2010, as a part of a federal investigation into bribery, State Senators Scott Beason and Benjamin Lewis, and State Representative Barry Mask agreed to wear recording devices. At trial in 2011, these recordings became public and revealed that a cadre of prominent state legislators had plotted to stop a gambling-related referendum from appearing on the November 2010 ballot. These legislators were concerned that the referendum would increase Black voter turnout because, in general, Black Alabamians support gambling.⁹⁶ While discussing their plot to suppress Black voter turnout, Senators Beason, Lewis, and other top legislators were recorded deriding Black Alabamians. They called Black voters “Aborigines” and predicted that the referendum’s presence would lead “[e]very black, every illiterate” to be “bused [to the polls] on HUD financed buses.”⁹⁷

The district court presiding over the criminal trial resulting from the bribery investigation ruled that the legislators were not credible witnesses. The court found that “Beason and Lewis lack credibility for two reasons. First, their motive for cooperating with F.B.I. investigators was not to clean up corruption but to increase Republican political fortunes by reducing Black voter turnout. Second, they lack credibility because the record establishes their purposeful, racist intent.”⁹⁸ The court concluded that the “recordings represent compelling evidence that political exclusion through racism remains a real and enduring problem” in Alabama and, as recently as 2010, overt racism “remain[s] regrettably entrenched in the high echelons of state government.”⁹⁹

2. *State Legislative Redistricting Plans*

Following the 2010 elections, the Republican Party won supermajorities in both houses of the State Legislature.¹⁰⁰ This was the first time since the

⁹⁶ See *United States v. McGregor*, 824 F. Supp. 2d 1339, 1344–48 (M.D. Ala. 2011) (finding the two legislators not credible witnesses because of their racially charged remarks and personal goals).

⁹⁷ *Id.* at 1345.

⁹⁸ *Id.*

⁹⁹ *Id.* at 1347.

¹⁰⁰ Ala. Legis. Black Caucus v. Alabama (*ALBC III*), 231 F. Supp. 3d 1026, 1037 (M.D. Ala. 2017) (three-judge court).

1870s that Republicans held majorities in the Legislature.¹⁰¹ Following the 2010 census, the Legislature was given the opportunity to redraw state legislative districts to cement Republican hegemony in part by packing as many Black voters as possible into majority-minority districts.¹⁰² This packing helped to lessen Black voters' influence in majority-white districts. To accomplish its goal, the Legislature set rigid one-person- one-vote and racial quotas that tried to keep the Black voter percentage in the majority-minority districts at the same percentage as in the 2000 maps.¹⁰³ For example, to maintain the 72% Black population in Senate District 26, the Legislature added 15,785 new voters to it, only 36 of whom were white.¹⁰⁴

In *Alabama Legislative Black Caucus v. Alabama*, the Alabama Legislative Black Caucus ("ALBC"), the caucus of Black elected officials in the Legislature, and the Alabama Democratic Conference ("ADC"), the Black caucus within the Alabama Democratic Party, brought a lawsuit challenging the state legislative redistricting plan under Section 2 of the VRA and the Fourteenth Amendment.¹⁰⁵ The lawsuit alleged that the Alabama Legislature had intentionally sought to dilute the Black vote.¹⁰⁶

In addition to these traditional racial discrimination claims, the ALBC and ADC asserted that the redistricting plan was an unconstitutional "racial gerrymander."¹⁰⁷ A racial gerrymander occurs where a legislature deliberately segregates voters into districts based on their race without adequate legal justification.¹⁰⁸ The ALBC and ADC sought to prove that race was the "predominant" motive for the Alabama Legislature's decision to place voters in or out of certain districts.¹⁰⁹ The plaintiffs claimed that Alabama added more minority voters than needed for the majority-minority

¹⁰¹ *Republicans Claim Majority in Alabama House and Senate for 1st Time in 136 Years*, ALA. LOCAL MED. (Nov. 3, 2010), https://www.al.com/live/2010/11/republicans_historic_alabama_majority.html [<https://perma.cc/GTB3-UJ5R>].

¹⁰² See *ALBC III*, 231 F. Supp. 3d at 1037–38 (finding that race predominated in drawing the new districts).

¹⁰³ Ala. Legis. Black Caucus v. Alabama (*ALBC II*), 575 U.S. 254, 259–60, 267 (2015).

¹⁰⁴ *Id.* at 260.

¹⁰⁵ Ala. Legis. Black Caucus v. Alabama (*ALBC I*), 989 F. Supp. 2d 1227, 1236 (M.D. Ala. 2013) (three-judge court); see also *ALBC II*, 231 F. Supp. 3d at 1032.

¹⁰⁶ *ALBC I*, 989 F. Supp. 2d at 1236.

¹⁰⁷ *ALBC II*, 575 U.S. at 260.

¹⁰⁸ *Id.* at 258.

¹⁰⁹ *Id.* at 260.

districts to comply with the VRA, and so the districts “harm[ed] the very minority voters” that the VRA “sought to help.”¹¹⁰

After losing before a three-judge district court, the case reached the U.S. Supreme Court in 2015. The Court vacated the lower court opinion and remanded the case back to the district court for reconsideration.¹¹¹ The Supreme Court concluded that the fact that the Legislature “expressly adopted and applied a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote) provides evidence that race motivated the drawing of particular lines in multiple districts in the State.”¹¹² The Court ruled that Alabama had misread the VRA to reach its racial targets.¹¹³

On remand, the district court found that the Legislature was improperly motivated by race and that twelve of the majority-minority districts were unconstitutional racial gerrymanders.¹¹⁴

3. *State Witness Requirement for Absentee Voters*

Throughout 2020, America was in the grip of the deadly COVID-19 pandemic, which wreaked havoc on the 2020 elections. In May 2020, civil rights organizations and voters filed *People First of Alabama v. Merrill* to challenge Alabama’s two-witness or notary signature requirement for absentee ballots (the “witness requirement”), the photo ID requirement for absentee voters, and the Secretary of State’s de facto ban on curbside voting (“curbside voting ban”).¹¹⁵ The plaintiffs alleged that these voting restrictions endangered the health and safety of voters during the pandemic in violation of the constitutional right to vote, the Americans with Disabilities Act, and the VRA because they required people to violate health guidelines to vote.¹¹⁶

In June 2020, the district court issued a preliminary injunction that gave voters in Jefferson, Lee, and Mobile Counties the option of voting absentee without complying with the witness or photo ID requirements for the July 14

¹¹⁰ *Id.* at 259–60.

¹¹¹ *Id.* at 279.

¹¹² *Id.* at 267.

¹¹³ *Id.* at 275–76.

¹¹⁴ *ALBC III*, 231 F. Supp. 3d at 1348.

¹¹⁵ *People First of Ala. v. Merrill (People First I)*, 467 F. Supp. 3d 1179, 1192 (N.D. Ala. 2020).

¹¹⁶ *Id.* at 1196.

primary runoff election.¹¹⁷ Although the Supreme Court stayed this relief,¹¹⁸ at least 131 people voted under the injunction in the weeks before the stay.¹¹⁹

Before trial, the plaintiffs agreed to settlements with Jefferson, Montgomery,¹²⁰ Lee, Lowndes, Madison, and Wilcox counties,¹²¹ in which these counties agreed to expand early voting opportunities and declined to defend the challenged laws.

The case proceeded to trial to prevent Alabama's enforcement of the witness and photo ID requirements for absentee voters and the curbside voting ban during the November 2020 general election.¹²² In September 2020, after a two-week trial, the district court issued statewide relief from the curbside voting ban and exempted from the witness and photo ID requirements any voter whose age or medical condition put them at higher risk of serious illness from contracting COVID-19.¹²³

The district court held that the witness requirement violated Section 2 of the VRA.¹²⁴ The court concluded that, in the context of the pandemic, this requirement had a disparate impact on Black voters who were more likely to become infected and die from the virus, more likely to live alone, and less likely to possess the resources needed to notarize their ballots.¹²⁵ The court issued a declaratory judgment holding that, as applied in the pandemic, the witness requirement violates Section 2 and an injunction that let high-risk

¹¹⁷ *Id.* at 1226–27; *see also* *People First of Ala. v. Sec'y of State for Ala.*, 815 F. App'x 505, 511 (11th Cir. 2020) (Rosenbaum & Pryor, JJ., concurring).

¹¹⁸ *Merrill v. People First of Ala.*, 141 S. Ct. 190 (2020) (mem.).

¹¹⁹ Proposed Findings of Fact and Conclusions of Law at 94–95:44, *People First of Ala. v. Merrill*, No. 2:20-cv-00619 (N.D. Ala. Sept. 4, 2020) (on file with author); *see also* *People First of Ala. v. Merrill (People First II)*, 491 F. Supp. 3d 1076, 1131 (N.D. Ala. 2020) (noting that county election officials processed absentee ballots under the preliminary injunction prior to the issuance of the stay).

¹²⁰ *People First II*, 491 F. Supp. 3d at 1138.

¹²¹ *See, e.g.*, Order, *People First of Ala. v. Merrill*, No. 2:20-cv-00619 (N.D. Ala. Sept. 4, 2020), ECF No. 216 (agreeing to judicially enforceable settlement in Madison County); Order, *People First of Ala. v. Merrill*, No. 2:20-cv-00619 (N.D. Ala. Sept. 17, 2020), ECF No. 235 (agreeing to judicially enforceable settlement in Lee County); Order, *People First of Ala. v. Merrill*, No. 2:20-cv-00619 (N.D. Ala. Sept. 18, 2020), ECF No. 240 (agreeing to judicially enforceable settlement in Wilcox County); Order, *People First of Ala. v. Merrill*, No. 2:20-cv-00619 (N.D. Ala. Sept. 22, 2020), ECF No. 242 (agreeing to judicially enforceable settlement in Lowndes County).

¹²² *People First II*, 491 F. Supp. 3d at 1091.

¹²³ *Id.* at 1092–93.

¹²⁴ *Id.* at 1173–74.

¹²⁵ *Id.* at 1169–71.

voters sign an affidavit that effectively exempted them from complying with the witness requirement for the November 3, 2020 election only.¹²⁶

In support of this ruling, the court found that the State Legislature had enacted the witness requirement in 1997 as a part of “so-called reform measures that disproportionately impacted Black voters in the name of rooting out voter fraud.”¹²⁷ The witness requirement “had a ‘laser focus on Black political activists’ who had used Alabama’s absentee ballot process to increase Black voter turnout. At the time, only four state senators opposed these new restrictions; all were Black. Some White senators, in contrast, insisted that only Black voters engaged in voter fraud.”¹²⁸

On the merits, the court found that “[r]acial bias led legislators to implement racially discriminatory voting laws” and that “the plaintiffs presented evidence that these discriminatory policies extended to the implementation of the witness and photo ID requirements in the 1990s.”¹²⁹ The court concluded that at least some state officials had acted with discriminatory intent, explaining:

To be sure, not all advocates for the absentee voting requirements instituted in the 1990s were motivated by racial bias. However, the plaintiffs presented evidence that *some state officials still were*, with one State senator “insist[ing]” voter fraud was only perpetrated by Black people, and others praising the resulting drop in absentee voting even though “the unspoken reality was that those numbers undoubtedly represented a suppression of legitimate Black votes.”¹³⁰

Indeed, the Secretary of State candidly conceded that his own attempt in 2018 to remove the witness requirement was thwarted by the racial biases of legislative leaders. He testified that:

Now, in 2018, the bill came back with that change made, but th[e] [elimination of the witness requirement] wasn’t part of it anymore And the Republican party leadership, there were members that actually killed the bill because they thought since a liberal, black Democrat was carrying the bill that there had to be something wrong with it.¹³¹

¹²⁶ *Id.* at 1174, 1180; *see also* Final Judgment and Injunction Order at 3, *People First of Ala. v. Merrill*, No. 2:20-cv-00619 (N.D. Ala. Sept. 30, 2020), ECF No. 251 (detailing text of the order).

¹²⁷ *People First II*, 491 F. Supp. 3d at 1106.

¹²⁸ *Id.* at 1106 (citations omitted).

¹²⁹ *Id.* at 1173.

¹³⁰ *Id.* (emphasis added) (alteration in original) (citations omitted).

¹³¹ Transcript of Bench Trial at 787:11–788:7, *People First of Ala. v. Merrill*, No. 2:20-cv-00619 (Sept. 11, 2020).

Two weeks after the injunction against the witness requirement, the U.S. Court of Appeals for the Eleventh Circuit stayed that part of the injunction.¹³² Still, because Alabama was required to count those absentee ballots cast under the injunction and postmarked before the stay,¹³³ 91,000 people had the option of voting without the witness or photo ID requirements in the weeks prior to the stay.¹³⁴ Further, because the parties dismissed their appeals after the election,¹³⁵ the district court's declaratory judgment, which concluded that Alabama had violated the VRA, was never overturned on appeal.

4. *State Laws Governing the Jefferson County School Board*

Springing in part from the longstanding desegregation case, *Stout v. Jefferson County Board of Education*, some of the *Stout* plaintiffs filed a separate lawsuit under Section 2 of the VRA challenging the election system of the Jefferson County Board of Education.¹³⁶ As a result, Jefferson County became the second location in Alabama (after Evergreen) and the third nationally (after Pasadena, Texas)¹³⁷ to be subject to Section 3(c) preclearance since *Shelby County*.¹³⁸

In *Jones v. Jefferson County Board of Education*, Black voters sued the county school board and the probate judge to address the hybrid system of electing the five school board members.¹³⁹ Under this system, four of the school

¹³² *People First of Ala. v. Sec'y of State for Ala.*, No. 20-13695-B, 2020 WL 6074333 (11th Cir. Oct. 13, 2020).

¹³³ After the Eleventh Circuit issued the stay, the Alabama Secretary of State announced that absentee ballots postmarked or turned in no later than October 13, 2020, the date of the stay, would be excused from the witness and photo ID requirements pursuant to the district court's order. Mike Cason, *Some Alabama Absentee Ballots Could Be Invalidated by Timing of Court Ruling*, ALA. MEDIA GRP. (Oct. 28, 2020), <https://www.al.com/news/2020/10/timing-of-court-rulings-could-invalidate-some-alabama-absentee-ballots.html> [<https://perma.cc/R9B2-LD8N>].

¹³⁴ According to the Alabama Secretary of State, over 91,000 people cast absentee ballots before October 13, 2020, the date that the Eleventh Circuit issued the stay. John Sharp, *Alabama Voters Set Absentee Voting Record*, ALA. MEDIA GRP. (Oct. 16, 2020, 4:47 PM), <https://www.al.com/news/2020/10/alabama-voters-set-absentee-voting-record.html> [<https://perma.cc/4TB8-EDRT>].

¹³⁵ *People First of Ala. v. Sec'y of State for Ala.*, No. 20-13695-GG, 2020 WL 7038817 (11th Cir. Nov. 13, 2020); *People First of Ala. v. Sec'y of State for Ala.*, No. 20-13695-GG, 2020 WL 7028611 (11th Cir. Nov. 16, 2020).

¹³⁶ *Jones v. Jefferson County Bd. of Educ.*, No. 2:19-cv-01821-MHH, 2019 WL 7500528, at *1 (N.D. Ala. Dec. 16, 2019).

¹³⁷ *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 729–30 (S.D. Tex. 2017).

¹³⁸ *Jones*, 2019 WL 7500528, at *5.

¹³⁹ *Id.* at *1.

board members were elected at-large from a “multimember” district and the fifth member was elected from a single-member “subdistrict.”¹⁴⁰

The at-large multimember district was 70.5% white and 25% Black and encompassed only those areas of Jefferson County where the county board operated schools.¹⁴¹ The subdistrict is a little more than 50% Black and encompasses the areas of the county where cities, like Birmingham, Bessemer, Vestavia Hills, and Fairfield, control the public schools independent from the county school board.¹⁴² Since 1986, a Black woman had repeatedly been elected from the subdistrict.¹⁴³ But no Black person has ever been elected to any of the seats in the at-large multimember district.¹⁴⁴

In December 2019, upon the stipulation of the parties, a federal court ruled that the at-large multimember district violated Section 2 of the VRA.¹⁴⁵ Based on the stipulated facts, the court found that the State Legislature had enacted the 1975 law that created the at-large multimember district “for the purpose of limiting the influence of Black voters.”¹⁴⁶ The court also held that a 1997 state law requiring numbered posts for the multimember district “results in Black voters being denied an equal opportunity to participate in the political process and elect representatives of their choice.”¹⁴⁷ Accordingly, the court adopted a remedial map that divided the multimember district into four single-member districts.¹⁴⁸ The court further ordered the county to submit future changes related to the remedial map and

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at *1–2.

¹⁴² *Id.*

¹⁴³ *Id.* at *2.

¹⁴⁴ *Id.* at *2.

¹⁴⁵ *Id.* at *4.

¹⁴⁶ *Id.* at *3.

¹⁴⁷ *Id.* at *2. In the complaint, the plaintiffs alleged that “Act No. 143 (1997) enhanced the racially discriminatory nature of the multimember district by establishing numbered places and staggered six-year terms for each Board member,” and “[b]y 1997, because of the *Dillard v. Crenshaw County* litigation, 640 F. Supp. 1347, 1361 (M.D. Ala. 1986), it was well-known in Alabama that numbered places acted as anti-single shot voting rules, which enhance the discriminatory effect of at-large election systems.” Complaint at ¶¶ 21–23, 2019 WL 7601906, *Jones v. Jefferson County Bd. of Educ.*, No. 2:19-CV-01821 (N.D. Ala. Dec. 16, 2019), ECF No. 1. The U.S. Department of Justice has no record of Act No. 143’s submission for preclearance review. Letter from Kilian Kagle, Chief, C.R. Div., Freedom of Information/Privacy Acts Branch, to Deuel Ross, NAACP Legal Def. & Educ. Fund, Inc. (May 21, 2020) (on file with author).

¹⁴⁸ *Jones*, 2019 WL 7500528, at *4.

voter eligibility rules for Section 3(c) preclearance review through December 2031.¹⁴⁹

In November 2022, a Black woman defeated a white incumbent for the first-time in the former multimember district.¹⁵⁰ In 2018, the school board had censured that same white incumbent for posting a racist meme online.¹⁵¹

5. Congressional Redistricting Plans

In November 2021, in response to the release of the 2020 census, the Alabama legislature redrew the State's seven congressional districts.¹⁵² Per the 2020 census, the white population decreased from 67% in 2010 to 63.12% in 2020 whereas the Black population remained stable, constituting 27% of the State's population.¹⁵³ Despite these population changes, the Alabama legislature created only one majority Black district and six supermajority white districts with Black populations no larger than 30%.¹⁵⁴ Because white voters tend to vote as a bloc against Black preferred candidates in general and primary elections, the State's plan ensures that white Alabamians are substantially over-represented because white voters control 86% of districts but comprise only 63% of the population.¹⁵⁵ In fact, even if Alabama were to draw a second majority-Black congressional district, white voters would still be overrepresented in Congress with 71.5% of Alabama districts containing white majorities.¹⁵⁶

In three separate lawsuits, Black voters challenged Alabama's congressional plan: *Singleton v. Merrill*, No. 2:21-cv-1291 (challenging the plan on constitutional grounds only), *Milligan v. Merrill*, No. 2:21-cv-1530 (challenging the plan under the Constitution and VRA), and *Caster v. Merrill*,

¹⁴⁹ *Id.* at *5.

¹⁵⁰ Bd. of Registrars, *Unofficial Election Night Results*, JEFFERSON CNTY. ALA. (Nov. 8, 2022), <https://www.jccal.org/Default.asp?ID=1390&pg=Unofficial+Election+Night+Results> [<https://perma.cc/594F-7HL6>]; Jen Cardone, *Jefferson County School Board Will Be Elected by District, Not At-Large Tuesday*, CBS42 (Nov. 7, 2022, 11:36 PM), <https://www.cbs42.com/news/politics/your-local-election-hq/jefferson-county-school-board-will-be-elected-by-district-not-at-large-tuesday/> [<https://perma.cc/ZH8T-EXAL>].

¹⁵¹ Trisha Powell Crain, *Jefferson County Board Member Donna Pie Apologizes, Says She Will Not Resign*, AL.COM (Jun. 20, 2018, 8:43 PM), <https://www.al.com/news/2018/06/jefferson-county-board-member.html> [<https://perma.cc/9EX8-G67V>].

¹⁵² *Milligan v. Merrill* (*Milligan*), 582 F. Supp. 3d 924 (N.D. Ala. 2022).

¹⁵³ *Id.* at 997, 1025.

¹⁵⁴ *Id.* at 961.

¹⁵⁵ *Id.* at 1025-26.

¹⁵⁶ *Id.*

No. 2:21-cv-1536 (challenging to the plan under the VRA only).¹⁵⁷ Because the *Milligan* and *Singleton* cases involved constitutional challenges to a statewide plan, the cases were referred to a three-judge court.¹⁵⁸ To resolve the plaintiffs' motions for a preliminary injunction, the three judges held a consolidated evidentiary hearing where seventeen expert and fact witnesses testified about the legality of the plan.¹⁵⁹

In January 2022, the three judges unanimously concluded that the *Milligan* and *Caster* plaintiffs were substantially likely to succeed on their claim that Alabama's congressional map violates the VRA and the court granted a preliminary injunction blocking Alabama's map.¹⁶⁰ The court found that voting remains racially polarized in congressional and other statewide elections, including the 2016 Republican presidential primary.¹⁶¹ Based on the undisputed expert testimony and the stipulations of the parties, the court also found that Alabama continues to discriminate against Black people in voting, education, employment, and other areas resulting in substantial racial disparities.¹⁶²

The three-judge court found that the State's history of discrimination against the Black Belt—the eighteen or so majority-Black counties that run through the middle of the State—resulted in “Black communities in the Black Belt continu[ing] to struggle in primitive conditions and suffer unusual health difficulties and lack of even the most basic services.”¹⁶³ For example, among other evidence, the court cited a 2019 United Nations report's findings that the “extreme poverty conditions in the Black Belt were ‘very uncommon in the First World,’ reported that Black residents ‘lacked proper sewage and drinking water systems and had unreliable electricity,’ and described instances in which households fell ill due to E.coli and hookworm infections as a result of drinking water contaminated with raw sewage.”¹⁶⁴ The three judges unanimously found that the “Black Belt stands out to us as quite clearly a community of interest of substantial significance” and that the

¹⁵⁷ *Id.* at 935.

¹⁵⁸ *Id.* at 940; *see also* 28 U.S.C. § 2284(a) (“A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.”).

¹⁵⁹ *Milligan*, 582 F. Supp. 3d at 935–36.

¹⁶⁰ *Id.* at 936.

¹⁶¹ *Id.* at 1018–19.

¹⁶² *Id.* at 1020–23.

¹⁶³ *Id.* at 1021.

¹⁶⁴ *Id.* at 1021–22.

residents of the Black Belt share a common history, culture and economy.¹⁶⁵ Under the State's plan, however, "the Black Belt is split into four Congressional districts."¹⁶⁶ Yet, the plaintiffs' experts showed that it is possible to place nearly all eighteen Black Belt counties into two majority-Black districts.¹⁶⁷

The court ordered Alabama to adopt a remedial plan with a second district where Black voters would have a fair chance to elect a candidate of their choice in the November 2022 elections.¹⁶⁸ Shortly thereafter, however, on February 7, 2022, the U.S. Supreme Court voted 5-4 to stay the district court's remedial order.¹⁶⁹ In his opinion concurring in the order granting the stay, Justice Brett Kavanaugh joined by Justice Samuel Alito, explained that the stay was necessary because of the upcoming March 30 primary election.¹⁷⁰ Justice Kavanaugh noted, however, that both parties had "at least a fair prospect of success on appeal."¹⁷¹ The Court heard oral argument on October 4, 2022.

In June 2023, the Supreme Court issued its landmark ruling in *Allen v. Milligan*, in which the Court affirmed that Alabama "likely violated Section 2 of the Voting Rights Act."¹⁷² In an opinion written by Chief Justice John Roberts, and joined by Justice Kavanaugh, the Court declined Alabama's invitation to radically "remake" the existing standard for identifying vote dilution under the VRA.¹⁷³ Among other things, the Court affirmed the finding that the Black Belt is an important community of interest and rejected Alabama's argument that its desire to maintain the "core" of prior districts could justify a VRA violation.¹⁷⁴ The Court also rejected Alabama's proposed standard whereby the plaintiffs would need to rely on computer programs to randomly generate thousands of maps to prove that a state's plan deviated from a purportedly "race-neutral benchmark."¹⁷⁵ Finally, a majority of the Court for the first time held that Section 2 of the VRA is

¹⁶⁵ *Id.* at 1012-14.

¹⁶⁶ *Id.* at 1014.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 936-37.

¹⁶⁹ *Merrill v. Milligan*, 142 S. Ct. 879 (2022).

¹⁷⁰ *Id.* at 880-81 (Kavanaugh, J., concurring).

¹⁷¹ *Id.* at 881 n.2.

¹⁷² *Allen v. Milligan*, 143 S. Ct. 1487 (2023).

¹⁷³ *Id.* at 1506.

¹⁷⁴ *Id.* at 1505.

¹⁷⁵ *Id.* at 1512.

constitutional and that, under certain circumstances, the Constitution authorizes “race-based redistricting as a remedy for state districting maps that violate § 2.”¹⁷⁶

6. *State Voter ID Requirements*

In 2011, the Alabama legislature enacted two controversial voter identification (“ID”) requirements: a documentary proof-of-citizenship requirement for voter registration and a photo identification requirement for in-person and absentee voters. In a series of lawsuits, civil rights advocates and lawyers have offered substantial evidence that the legislators who enacted the bills containing these requirements were motivated by a desire to suppress the votes of people of color. While federal courts have blocked Alabama’s efforts to enforce the proof-of-citizenship requirement, legal challenges to the photo ID requirement have largely proven unsuccessful.

i. Documentary Proof-of-Citizenship Requirement

The documentary proof-of-citizenship requirement was a key provision of House Bill 56 (“H.B. 56”), a wide-ranging anti-immigrant bill enacted in June 2011.¹⁷⁷ H.B. 56 heavily regulated or criminalized every aspect of the lives of non-citizens in Alabama. Among other restrictions, H.B. 56 required schools to report the immigration status of their students, criminalized renting to or contracting with undocumented immigrants, mandated that law enforcement officials check the immigration status of suspected immigrants, and established a state immigration police force.¹⁷⁸

Before H.B. 56, Alabama law, like the law in most other states, required new registrants to swear under penalty of perjury that they are American citizens.¹⁷⁹ H.B. 56 sought to add the requirement that people who are registering to vote for the first time provide election officials with a driver’s

¹⁷⁶ *Id.* at 1516-17.

¹⁷⁷ ALA. CODE § 31-13-28.

¹⁷⁸ See ACLU Immigrants’ Rights Project, *Preliminary Analysis of HB56 “Alabama Taxpayer and Citizen Protection Act”*, ACLU 1-3, 5 (2011), https://www.aclu.org/wpcontent/uploads/document/prelimanalysis_alabama_hb56_0.pdf [<https://perma.cc/6TEC-W6ZE>] (analyzing sections of H.B. 56 for their constitutionality).

¹⁷⁹ See Letter from T. Christian Herren, Jr., Chief, Voting Section, Civ. Rts. Div., U.S. Dep’t of Just. to Winfield J. Sinclair, Assistant Att’y Gen. of Ala. (Jan. 25, 2013) (on file with author) (discussing Alabama’s requirement of new registrants swearing that they are American citizens).

license, passport, birth certificate, naturalization certificate, or similar identification.¹⁸⁰

H.B. 56 contained a grandfather clause, which exempted currently registered voters from this voter ID requirement.¹⁸¹ Because Black and Latinx Alabama citizens are less likely to possess the required ID¹⁸² and are more likely to be unregistered to vote (and so not subject to the exemption), the documentary proof-of-citizenship requirement would make it harder to register voters of color.¹⁸³

The Alabama legislators who sponsored H.B. 56, including State Senator Scott Beason and State Representative Kerry Rich, were explicit in explaining that the law and its documentary proof-of-citizenship requirement were designed to drive Latinx citizens and noncitizens from Alabama.¹⁸⁴ For example, in a February 2011 speech, Senator Beason encouraged legislators to “empty the clip” on immigration.¹⁸⁵ He stated that H.B. 56 was necessary since “Democrats do not want to solve the illegal immigration problem because they know, this is a fact, that when more illegal immigrants move into an area, when their children grow up and get the chance to vote, they vote for Democrats.”¹⁸⁶ Senator Beason also referred to the American-born children of immigrants as “anchor babies.”¹⁸⁷ Representative Rich was similarly opposed to the presence of Latinx people in Alabama. In support of H.B. 56, Mr. Rich stated that he was “primarily” worried about “Hispanic” immigrants and their “alleged inability ‘to speak English.’”¹⁸⁸ In the legislative debates on H.B. 56, Mr. Rich “repeatedly

¹⁸⁰ ALA. CODE § 31-13-28(k).

¹⁸¹ ALA. CODE § 31-13-28(d).

¹⁸² *Greater Birmingham Ministries v. Sec’y of State for Ala. (GBM II)*, 992 F.3d 1299, 1312–13 (11th Cir. 2021).

¹⁸³ As of November 2020, the Latinx self-reported citizen voting age population in Alabama was 67.0%, compared to 60.6% of African-Americans and 70.6% of non-Hispanic whites. U.S. CENSUS BUREAU, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2020, Report No. P20-577, tbl.4b, “Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2020,” <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html> [<https://perma.cc/T5JW-DBTX>].

¹⁸⁴ *See* Cent. Ala. Fair Hous. Ctr. v. Magee (*Magee*), 835 F. Supp. 2d 1165, 1182, 1992–93 (M.D. Ala. 2011) (“The sponsors of HB 56 declared that their goal was the ‘self-deportation’ of unauthorized persons As Senator Beason explained, HB 56 was ‘designed to reduce the number of illegal aliens in the state.’” (citations omitted)).

¹⁸⁵ *GBM II*, 992 F.3d at 1341 (Gayles, J., dissenting).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

conflated ‘illegal immigrants’ and ‘Hispanics’ when discussing the ‘kinds of social and economic problems’ that HB 56 purportedly sought to address.”¹⁸⁹ Mr. Rich asserted that “[t]he major problem with illegals in [his] area is with Hispanics” and that he considered Latinx U.S. citizens with undocumented parents to be a “drain on the taxpayers.”¹⁹⁰

In part because of the racist motives of these legislators, federal courts determined that the educational¹⁹¹ and housing provisions of H.B. 56 were substantially likely to have violated the Fourteenth Amendment and the Fair Housing Act, respectively.¹⁹² Courts also found that federal law preempted much of H.B. 56.¹⁹³

H.B. 56’s documentary proof-of-citizenship requirement suffered a similar fate to the other provisions. While Alabama enacted H.B. 56 in 2011 before the *Shelby County* ruling paralyzed the preclearance regime, Alabama never obtained preclearance for H.B. 56’s voter ID requirement. In November 2012, the Justice Department wrote to Alabama requesting information about its plans to enforce H.B. 56 and seeking information to determine whether it would have a retrogressive effect on voters of color.¹⁹⁴ Alabama responded to the Justice Department but refused to provide the requested voter files and legislative history.¹⁹⁵ After some additional correspondence, Alabama wrote to the Justice Department in May 2013 to withdraw the request to preclear H.B. 56. The Alabama Attorney General’s withdrawal letter explained that the Supreme Court is “currently considering cases that

¹⁸⁹ *Id.*; see also *Magee*, 835 F. Supp. 2d at 1192 (“Representative Kerry Rich’s opening statement to the legislature demonstrates the numerous ways in which legislators frequently conflated illegal immigration and Hispanics when discussing the ills to be remedied by HB 56.”).

¹⁹⁰ *GBM II*, 992 F.3d at 1341 (Gayles, J., dissenting) (alteration in original); see also *Magee*, 835 F. Supp. 2d at 1194 n.21 (“Representative Rich noted ‘estimates by a large number of people that roughly 80% of these people in the area are illegal,’ and, to be sure, Rich was ‘talking about people that are Hispanic that are in our area that are illegal.’”).

¹⁹¹ *Hispanic Int. Coal. of Ala. v. Governor of Ala.*, 691 F.3d 1236, 1249 (11th Cir. 2012).

¹⁹² See *Magee*, 835 F. Supp. 2d at 1200 (ordering a preliminary injunction based on the significant likelihood that H.B. 56 violated constitutional rights and the FHA).

¹⁹³ See, e.g., *United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) (“For these reasons, and the numerous reasons detailed above that require federal law to prevail, the equities favor enjoining enforcement of sections 10, 11(a), 13(a), 16, 17, and 27.”).

¹⁹⁴ Letter from T. Christian Herren, Jr., Chief, Civ. Rts. Div., Voting Section, to Winfield J. Sinclair, Ala. Assistant Att’y Gen. (Nov. 27, 2012) (on file with author).

¹⁹⁵ Letter from Winfield J. Sinclair, Ala. Assistant Att’y Gen., to T. Christian Herren, Jr., Chief, Civ. Rts. Div., Voting Section (Jan. 25, 2013) (on file with author).

could render moot any need for the State to preclear the provisions at issue here, and the Court will likely decide those cases by the end of June.”¹⁹⁶

Unfortunately, Alabama’s gambit paid off when, a month later, the Supreme Court issued the *Shelby County* decision, ending preclearance.¹⁹⁷

Despite being freed from Section 5 preclearance in 2013, Alabama did not immediately attempt to enforce H.B. 56’s documentary proof-of-citizenship requirement. Rather, the Alabama Secretary of State waited until December 2014 to ask the U.S. Election Assistance Commission (“EAC”) to add this requirement to the state-specific instructions on the federal registration form.¹⁹⁸

The National Voter Registration Act (“NVRA”) requires states to “accept and use” federal mail-in voter registration forms to register eligible citizens to vote.¹⁹⁹ While some states in recent years have enacted laws that require documentary proof-of-citizenship to register, neither the federal form, nor its list of state-specific voter-registration instructions have ever included this requirement. Indeed, in 2013, the U.S. Supreme Court ruled in *Arizona v. Inter Tribal Council of Arizona, Inc.* that the NVRA requires a state to register people who submit a federal form, even if that person fails to satisfy a state’s documentary proof-of-citizenship requirement, which is not required by the form itself.²⁰⁰ Yet the Court noted that states are free to request that the EAC alter the federal form and, if necessary, could challenge the EAC’s denial under the federal Administrative Procedure Act.²⁰¹

In January 2016, in response to the requests of Alabama, Georgia, and Kansas, the EAC approved modifications to the state-specific instructions for these states.²⁰² Soon thereafter, the League of Women Voters and others filed suit in federal court in Washington, D.C. to enjoin the EAC from changing the federal form’s instructions for Alabama, Georgia, and Kansas.²⁰³ While the district court denied a motion for a preliminary injunction, the U.S. Court of Appeals for the D.C. Circuit reversed that

¹⁹⁶ Letter from Winfield J. Sinclair, Ala. Assistant Att’y Gen., to T. Christian Herren, Jr., Chief, Cts. Rts. Div., Voting Section (May 15, 2013) (on file with author).

¹⁹⁷ *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013).

¹⁹⁸ *League of Women Voters v. Newby*, 195 F. Supp. 3d 80, 85 (D.D.C. 2016).

¹⁹⁹ 52 U.S.C. § 20505(a)(1).

²⁰⁰ *Arizona v. Inter Tribal Council of Ariz.*, 570 U.S. 1, 20 (2013).

²⁰¹ *Id.* at 19–20.

²⁰² *League of Women Voters v. Newby*, 838 F.3d 1, 6 (D.C. Cir. 2016).

²⁰³ *Newby*, 195 F. Supp. 3d at 87.

ruling and enjoined the changes to the federal form.²⁰⁴ At the time, Alabama and Georgia were not enforcing their proof-of-citizenship requirements.²⁰⁵ Still, the D.C. Circuit ruled that the EAC had failed to determine whether these proof-of-citizenship requirements were “necessary” within the meaning of the NVRA to assess the eligibility of registrants.²⁰⁶ Because states must register to vote anyone who uses a federal voter-registration form, the injunction against the EAC from adding the documentary proof-of-citizenship requirements to the federal forms effectively bars Alabama, Georgia, and Kansas from enforcing such requirements.²⁰⁷

Respecting the effects of these proof-of-citizenship requirements on voters in Alabama, Georgia, and Kansas, the D.C. Circuit ruled that enforcing them would lead to “the abridgment of the right to vote.”²⁰⁸ In Kansas, the requirement had already made voter-registration substantially harder for otherwise eligible people, resulting in the suspensions of 17,000 registrants,²⁰⁹ and “it seems almost certain that similar obstacles to registration will spring up in Alabama and Georgia when those States decide to enforce their laws.”²¹⁰ The Court further ruled that, in Alabama and Georgia, “the mismatch between the Federal Form’s state-specific requirements and the temporary non-enforcement practice in those states is very likely to confuse the public” and that such “[c]onfusion will create a disincentive for citizens who would otherwise attempt to register to vote.”²¹¹

On remand, the district court granted summary judgment to the plaintiff civil rights organizations. The court concluded that the EAC’s decision to approve Alabama’s request to modify the federal form violated the Administrative Procedure Act because the EAC failed to determine that the States’ requested changes related to these documentary proof of citizenship requirements were “necessary” before the EAC added them to federal form.²¹²

²⁰⁴ *Newby*, 838 F.3d at 14–15.

²⁰⁵ *Id.* at 6.

²⁰⁶ *Id.* at 11–12.

²⁰⁷ *Id.* at 4–5.

²⁰⁸ *Id.* at 13.

²⁰⁹ *Id.*

²¹⁰ *Id.* at 8.

²¹¹ *Id.* at 13.

²¹² *League of Women Voters of United States v. Harrington*, 560 F. Supp. 3d 177, 188–89 (D.D.C. 2021).

Since this setback in modifying the federal form, Alabama has yet to take any new steps to try to enforce H.B. 56's documentary proof-of-citizenship requirement.²¹³ This is perhaps because of the overt evidence that H.B. 56 was enacted with a racially discriminatory intent. For that reason, the litigation related to H.B. 56 serves as important evidence that Alabama continues to enact discriminatory voting laws.

ii. Voter Photo ID Requirement and DMV Closures

The photo ID law in House Bill 19 (“H.B. 19”) was the second voter ID requirement enacted by the Alabama Legislature in June 2011, just days after H.B. 56's documentary proof-of-citizenship requirement.²¹⁴ The photo ID law requires anyone who casts an in-person and absentee ballot to show one of seven forms of photo ID.²¹⁵ The law prevents anyone from voting who fails to show the requisite photo ID.²¹⁶ The only exception is a provision that permits a voter to cast a valid ballot without showing photo ID if two poll officials “positive[ly] identify” or vouch for the voter.²¹⁷

The Alabama Legislature's effort to enact a photo ID law dates back several decades. Since at least the 1990s, Black legislators in Alabama had repeatedly defeated the efforts of a bipartisan group of white legislators to enact a photo ID law.²¹⁸ Black legislators were correctly concerned that requiring a photo ID to vote would disproportionately disenfranchise Black voters who are less likely to possess a photo ID or the means to obtain one.²¹⁹ But in the 2010 elections, Republican supermajorities won control of both houses of the Legislature for the first time since the 1800s.²²⁰ This Republican majority enabled the photo ID law to pass despite Black legislators' opposition.²²¹

²¹³ Order to Show Cause at 5, *League of Women Voters of U.S. v. Newby*, No. 1:16-cv-00236-RJL (D.D.C. June 29, 2021), ECF No. 174.

²¹⁴ *Greater Birmingham Ministries v. Sec'y of State for Ala. (GBM II)*, 992 F.3d 1299, 1307 n.9 (11th Cir. 2021).

²¹⁵ *Id.* at 1308-09.

²¹⁶ *Id.* at 1310-11.

²¹⁷ *Id.* at 1311.

²¹⁸ *Id.* at 1305-06.

²¹⁹ *Id.* at 1313.

²²⁰ *Id.* at 1339 (Gayles, J., dissenting).

²²¹ *Id.* at 1339-40.

Although Alabama was required to seek preclearance under Section 5 of the VRA before enforcing the photo ID requirement, the Alabama Secretary of State intentionally declined to issue administrative rules, educate the public, train election officials, issue photo ID cards, or otherwise implement the photo ID law before the *Shelby County* ruling.²²² Had the Secretary taken such action, it would have violated Section 5 of the VRA. Instead, days after the *Shelby County* decision in June 2013, the Secretary issued proposed administrative rules for implementing the photo ID law, which he finalized in October 2013.²²³ The photo ID law first went into effect in June 2014.²²⁴

The photo ID law has been the subject of multiple lawsuits. Most recently, in *People First of Alabama v. Merrill*, the photo ID requirement for absentee voters was challenged by voters who could not comply with the law without significantly increasing the risk of contracting COVID-19 in the pandemic.²²⁵ As described in Section V(A)(3) above, the case saw some success when the court enjoined the photo ID law for the November 2020 elections.²²⁶ Before the injunction was stayed, nearly a hundred thousand voters had the option to request absentee ballots without providing photo ID.²²⁷

The as-applied challenge to the photo ID law in *People First of Alabama* was premised solely on the Americans with Disabilities Act and constitutional claims, not claims of racial discrimination or violations of the VRA.²²⁸ Nonetheless, as a part of a separate VRA challenge to the witness requirement, the district court did find that “[r]acial bias led legislators to implement racially discriminatory voting laws” and that “the plaintiffs presented evidence that these discriminatory policies extended to the implementation of the witness and photo ID requirements in the 1990s.”²²⁹ But the court did not rule against the photo ID requirement based on that finding.

Rather, in another case, *Greater Birmingham Ministries v. Merrill*, the photo ID law faced a direct facial challenge under Section 2 of the VRA. That case

²²² *Id.* at 1340.

²²³ *Id.*

²²⁴ *Id.* at 1304 (majority opinion).

²²⁵ *People First of Ala. v. Merrill (People First II)*, 491 F. Supp. 3d 1076, 1091–92 (N.D. Ala. 2020).

²²⁶ *Id.* at 1180.

²²⁷ *See supra* note 134.

²²⁸ *People First II*, 491 F. Supp. 3d at 1166–67.

²²⁹ *Id.* at 1173.

was filed in December 2015 by LDF on behalf of two local civil rights groups and four voters of color. The plaintiffs' experts showed that over 118,000 registered voters lacked the photo ID necessary to vote, including 3.33% of white voters, 5.49% of Black voters, and 6.98% of Latinx voters.²³⁰ Undisputed evidence also showed that "at least 2,197 voters have had their provisional ballots rejected solely because they lacked a qualifying photo ID, with Black voters being 4.58 times more likely than white voters to have their ballots rejected."²³¹ While Alabama asserted that its "mobile ID unit" travels to a person's home to provide an ID if he or she lacks transportation, the plaintiffs showed that the mobile units made less than ten home visits, that "mobile ID units were insufficiently dispersed to address transportation burdens, and that few voters even knew about the mobile ID unit option."²³²

As discussed in the litigation, the ability for Black Alabamians to obtain the required photo ID was made much more difficult ahead of the 2016 elections. In fall 2015, the Alabama Governor and Secretary of the Alabama Law Enforcement Agency ("ALEA") announced the closure of thirty-one driver's license-issuing offices.²³³ Troublingly, eight of the eleven counties that were expected to lose driver's licensing offices were majority Black counties.²³⁴ In response to public outcry, ALEA agreed to keep the offices partially open but with substantially reduced hours.²³⁵ The Secretary of ALEA claimed that he had warned the Governor that the closures would violate the VRA.²³⁶

The U.S. Department of Transportation also opened a civil rights investigation under Title VI of the Civil Rights Act, which prohibits a private or public entity that receives federal funding from instituting policies that have a discriminatory purpose or effect.²³⁷ The Department of

²³⁰ Corrected Joint Status Report at ¶ 338, *Greater Birmingham Ministries v. Merrill*, No. 2:15-cv-02193-LSC, 2018 WL 526619 (N.D. Ala. Jan. 9, 2018).

²³¹ *Greater Birmingham Ministries v. Merrill (GBM III)*, 997 F.3d 1363, 1374 (11th Cir. 2021) (Martin, J., dissenting).

²³² *Id.*

²³³ Mem. of Agreement Between the U.S. Dep't of Transp. and the Ala. L. Enft Agency, at 1. (Dec. 22, 2016), https://www.transportation.gov/sites/dot.gov/files/docs/ALEA%20US%20DOT%20Signed%20MOA_0.PDF [<https://perma.cc/MD6W-7XNB>].

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ John Sharp, *Rebekah Mason Suggested Closure of DMV Offices in Majority Black Counties, Report Shows*, ALA. MEDIA GRP. (Apr. 08, 2017, 1:00 PM), https://www.al.com/news/mobile/2017/04/rebekah_mason_suggested_closur.html [<https://perma.cc/G64E-KA7G>].

²³⁷ Mem. of Agreement Between U.S. Dep't of Transp. and Ala. L. Enft Agency, *supra* note 233, at 1.

Transportation was concerned in part that the closures would negatively impact the ability of Black people to obtain the ID needed to vote.²³⁸ Indeed, before *Shelby County*, the Justice Department had similarly objected under Section 5 to Michigan's closure of a photo ID-issuing office after that state began enforcing a voter ID law.²³⁹

In December 2016, the U.S. Department of Transportation concluded that the Alabama driver's license office closures and reductions in hours had a disparate impact on Black people in violation of the Civil Rights Act.²⁴⁰ The Department of Transportation and ALEA reached a settlement whereby ALEA agreed to fully restore the hours of the driver's license offices.²⁴¹ While these offices were fully reopened in early 2017, the closures had made it harder for Black voters to obtain ID for all of 2016, the first presidential election season in which the ID law was in effect.

Despite these burdens, in January 2018, the district court granted summary judgment for the State in *Greater Birmingham Ministries*.²⁴² The court found that the photo ID law did not violate Section 2 or the Constitution because it did not "prevent anyone from voting."²⁴³ Given this finding, the court declined to even address the plaintiffs' evidence of the Legislature's discriminatory intent in enacting the law.²⁴⁴

On appeal, a divided panel of the U.S. Court of Appeals for the Eleventh Circuit affirmed the district court's ruling. The court issued its opinion in July 2020,²⁴⁵ but then issued a slightly revised opinion in April 2021.²⁴⁶ In his dissent, Judge Darrin Gayles argued that "there are disputed issues of material

²³⁸ United States Attorney's Office Southern District of Alabama, *U.S. Dep't of Transp. Takes Action to Ensure Equitable Driver License Office Access for Alabama Residents*, U.S. DEP'T OF JUST. (Dec. 28, 2016), <https://www.justice.gov/usao-sdal/pr/us-department-transportation-takes-action-ensure-equitable-driver-license-office-access> [https://perma.cc/BM9T-3CEH].

²³⁹ Letter from Grace Chung Becker, Acting Assistant Att'y Gen., U.S. Dep't of Just. Civ. Rts. Div., to Brian Debano, Chief of Staff and Chief Operating Officer (Dec. 26, 2007), https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/L_071226.pdf [https://perma.cc/N24T-XU2H].

²⁴⁰ Mem. of Agreement Between U.S. Dep't of Transp. and Ala. L. Enf't Agency, *supra* note 233, at 1, 10.

²⁴¹ *Id.* at 5.

²⁴² *Greater Birmingham Ministries v. Merrill*, 284 F. Supp. 3d 1253, 1256 (N.D. Ala. 2018).

²⁴³ *Id.* at 1277.

²⁴⁴ *Id.*

²⁴⁵ *Greater Birmingham Ministries v. Sec'y of State for Ala. (GBM I)*, 966 F.3d 1202, 1206 (11th Cir. 2020).

²⁴⁶ *GBM II*, 992 F.3d at 1303–04.

fact regarding the Photo ID Law's purpose which prevent entry of summary judgment."²⁴⁷ Among other disputed facts, Judge Gayles noted that Alabama's justification for enacting the law, i.e., preventing voter fraud, was potentially a pretext for unlawful discrimination:

Voter fraud in Alabama is rare. While there have been some limited cases of absentee voter fraud, in-person voter fraud is virtually non-existent. . . . Indeed, Defendant presented evidence of only two cases of in-person voter fraud in Alabama's history. Despite the lack of in-person voter fraud, Secretary Merrill claims Alabama enacted the Photo ID Law to combat voter fraud and to restore confidence in elections—a dubious position in light of the facts. A close look at the history and the timing of the legislation and its actual impact on Black and Latino voters gives us a window into why Alabama likely designed a law to cure a problem that did not exist.²⁴⁸

The plaintiffs then filed a petition for rehearing en banc, which the Eleventh Circuit denied in June 2021.²⁴⁹ Four circuit judges dissented from the denial of rehearing.²⁵⁰ Judge Beverly Martin wrote for the four dissenters, and summarized the significant evidence of the law's racist intent:

Alabama State Senator Larry Dixon was the chief sponsor of photo ID bills between 1995 and 2010. Senator Dixon also made various comments about such efforts. In 1996, Senator Dixon stated, “the fact you don't have to show an ID is very beneficial to the black power structure and the rest of the Democrats.” In 2001, Senator Dixon said that voting without photo IDs “benefits black elected leaders, and that's why [black legislators are] opposed to it.” In 2010, in a meeting with several other legislators, another Alabama State Senator, Scott Beason, recorded Senator Dixon as saying: “Just keep in mind if [a pro-gambling] bill passes and we have a referendum in November, every black in this state will be bused to the polls. And that ain't gonna help. . . . Every black, every illiterate [will] be bused on HUD financed buses.” In another recorded meeting, Senator Beason himself referred to people who are black as “Aborigines.” HB19 was pre-filed with the Alabama legislature on February 25, 2011. Alabama State Representative Kerry Rich was the House sponsor of HB19. Representative Rich also made statements during a debate over HB56, a bill that passed during the same legislative session as HB19 and within mere days of each other, that referred to certain Latinos as “illegals” and a “drain on the taxpayers.” Senator Beason—the one

²⁴⁷ *Id.* at 1345 (Gayles, J., dissenting).

²⁴⁸ *Id.* at 1338–39.

²⁴⁹ *Greater Birmingham Ministries v. Merrill (GBM III)*, 997 F.3d 1363, 1364 (11th Cir. 2021) (en banc).

²⁵⁰ *Id.* at 1366 (Martin, J., dissenting).

who used the term “Aborigines” to describe African Americans—was a co-sponsor of Senate Bill 86, the Senate’s identical companion bill to HB19. Five other Alabama state senators were present for these recorded conversations with retired Senator Dixon, and all of them sponsored or voted in favor of HB19.²⁵¹

While the facial challenge to the photo ID law ultimately failed, at least five judges agreed that there was substantial evidence that the law was the product of intentional racial discrimination.

B. Intentional Discrimination by Local Jurisdictions

From 2006 to today, there have been at least three instances where the Justice Department or a federal court found that a local jurisdiction in Alabama engaged in intentional discrimination by making a voting related change that violated either the Constitution or the Voting Rights Act.

1. City of Calera

Before *Shelby County*, in 2008, the Justice Department issued Section 5 objections to both a redistricting plan and 177 annexations submitted by the City of Calera in Shelby County. Calera’s plan and annexations eliminated the city’s sole majority-Black district, which had been created pursuant to a consent decree in *Dillard*.²⁵² For twenty years, that district elected a Black councilman. In its objection, the Justice Department “[could] not conclude that the city has sustained its burden of showing that the proposed change does not have a discriminatory purpose or effect.”²⁵³

Following that objection, Calera nonetheless proceeded to conduct elections based on these un-precleared voting changes. The elections held under the objected-to plan and annexations resulted in the defeat of the incumbent Black city councilmember.²⁵⁴ In response, the Attorney General brought a Section 5 enforcement action to prohibit Calera from certifying the

²⁵¹ *Id.* at 1375–76.

²⁵² Letter from Grace Chung Becker, Acting Assistant Att’y Gen., U.S. Dep’t of Just. Civ. Rts. Div., to Dan Head (Aug. 25, 2008), https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/L_080825.pdf [<https://perma.cc/P5FF-LGJZ>].

²⁵³ *Id.*

²⁵⁴ *Shelby County v. Holder*, 811 F. Supp. 2d 424, 443 (D.D.C. 2011), *aff’d*, 679 F.3d 848 (D.C. Cir. 2012), *rev’d*, 570 U.S. 529, 584 (2013).

results of its elections.²⁵⁵ That action was resolved in a consent order whereby Calera agreed to hold new elections using limited voting, which resulted in the Black city councilman regaining his seat.²⁵⁶

2. *City of Evergreen*

After *Shelby County*, litigation has continued to serve as a check on voting discrimination. The City of Evergreen in Conecuh County, Alabama, for example, became the first jurisdiction in the nation to be subjected to preclearance again. This ruling was the result of a lawsuit, *Allen v. City of Evergreen*, brought in 2012 by Black voters under Sections 2 and 5 of the VRA and the Fourteenth and Fifteenth Amendments. The lawsuit challenged Evergreen's post-2010 census redistricting plan for its five single member districts.²⁵⁷ The plaintiffs also alleged that the city adopted a new system for determining voter eligibility for the 2012 municipal elections, in which the city removed any register voter from the municipal voting list whose name did not also appear on the list of city utilities customers.²⁵⁸ Under this new system, persons who were registered to vote in the city were deemed eligible to vote in city elections if and only if their names appeared on the utilities list.²⁵⁹ This system disproportionately removed Black voters from the voter list.²⁶⁰

A month before the *Shelby County* ruling, Evergreen had failed to obtain preclearance for these changes ahead of upcoming municipal elections. A federal court issued a preliminary injunction against the redistricting plan.²⁶¹ Although 62% of the city's population is Black and Black voters could form majorities in three districts, Evergreen had retained three districts with white majorities.²⁶² Evergreen's plan had over-concentrated ("packed") the Black

²⁵⁵ Consent Decree at 1–2, *United States v. City of Calera*, No. CV-08-BE-1982-S, 2008 WL 11512029 (N.D. Ala. Oct. 29, 2008), ECF No. 5 (three-judge court) (*Calera I*).

²⁵⁶ J. and Order Modifying Consent Decree at 2, *United States v. City of Calera*, No. CV-08-BE-1982-S, 2009 WL 10730411 (N.D. Ala. Oct. 23, 2009), ECF No. 10 (*Calera II*).

²⁵⁷ Order at 1, *Allen v. City of Evergreen*, No. 13-107-CG-M, 2013 WL 1163886 (S.D. Ala. Mar. 20, 2013), ECF No. 45 (*Allen I*).

²⁵⁸ Pls.' Mem. of Points and Authorities on Behalf of Mot. for Summ. J. and Mot. for Relief at ¶¶ 39–41, *Allen v. City of Evergreen*, No. 1:13-cv-00107, 2013 WL 4102107 (S.D. Ala. Aug. 1, 2013), ECF No. 60.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Allen I*, 2013 WL 1163886, at *1.

²⁶² *Id.* at 2–3.

population into two districts with excessive Black voter majorities of over 86%.²⁶³ Based on the plaintiffs' unrebutted evidence that the plan was the product of unconstitutional intentional discrimination, the court granted a preliminary injunction against Evergreen's packing of the Black community.²⁶⁴

After the *Shelby County* ruling came down in June 2013, the plaintiffs moved for summary judgment on their intentional discrimination claims and requested Section 3(c) relief. In January 2014, the court granted summary judgment for the plaintiffs and ordered Evergreen to submit future changes related to redistricting and voter eligibility for preclearance until December 2020.²⁶⁵

3. *City of Gardendale*

In 2017, the plaintiff class in the Jefferson County school desegregation case, *Stout v. Jefferson County Board of Education*, challenged the attempt by the City of Gardendale, which is 88% white, to form a school district separate from the County's more racially diverse district.²⁶⁶

This issue also implicated the rights of Black voters in Gardendale and Jefferson County. The Gardendale secession would have changed the method for selecting the board members who governed city schools. Prior to the secession, the city schools were controlled by the elected county school board—on which Black voters had some representation. But, after the secession, the new board that sought to control city schools was appointed by the Gardendale city council—which was all-white and elected at-large by a majority white city.²⁶⁷ In fact, the district court noted that Gardendale's all-white city council had discriminated in refusing to appoint a well-qualified Black woman to the school board.²⁶⁸ The court ordered that, if the secession

²⁶³ *Id.*

²⁶⁴ *Id.* at 3–4.

²⁶⁵ Order at 4–5, *Allen v. City of Evergreen*, No. 13-0107-CG-M, 2014 WL 12607819 (S.D. Ala. Jan. 13, 2014), ECF No. 82 (*Allen II*).

²⁶⁶ *Stout v. Jefferson Cnty. Bd. of Educ.*, 882 F.3d 988, 994 (11th Cir. 2018).

²⁶⁷ *Stout v. Jefferson Cnty. Bd. of Educ.*, 250 F. Supp. 3d 1092, 1141 (N.D. Ala. 2017); *see also Mayor & City Council, CITY OF GARDENDALE ALA.*, <https://www.cityofgardendale.com/mayor-council> [<https://perma.cc/TX3T-VBNP>] (last visited Dec. 19, 2022) (“The Gardendale City Council received more than 30 applications for the five positions on the inaugural board. From these applicants, the Gardendale City Council selected the five initial members of the board. Each of the individuals whom the city council selected is white.”).

²⁶⁸ *Id.* at 1141–42.

were to go through, Gardendale must appoint a Black person to the city's school board.²⁶⁹ In 2018, the U.S. Court of Appeals for the Eleventh Circuit blocked the Gardendale secession entirely and affirmed the district court's finding that Gardendale secessionists were motivated by racial discrimination.²⁷⁰

Before *Shelby County*, the courts had subjected proposed changes—like the Gardendale secession—that served to replace elected offices with appointed roles to preclearance review because of their potential to strip Black voters of their electoral power.²⁷¹ Civil rights activists and the U.S. Department of Justice had relied on Section 5 of the VRA to block several similar racially discriminatory school system secessions in Alabama.²⁷²

C. *Voting Rights Settlements and Other Indicia of Voting Discrimination*

In addition to judicial or administrative findings of discrimination, settlements that result in changes to allegedly discriminatory voting systems are also a strong sign of ongoing voting discrimination. Since 2006, as described below, the State of Alabama and several cities have settled matters alleging violations of the VRA or National Voter Registration Act by agreeing to remedy the challenged policies. Aside from these settlements, the complex litigation related to the City of Decatur's post-2010 redistricting plan, in which Decatur admitted that the plan violated the VRA, is another significant, but unconventional piece of evidence that voting discrimination still exists in Alabama.

²⁶⁹ *Id.* at 1183.

²⁷⁰ *Stout v. Jefferson Cnty. Bd. of Educ.*, 882 F.3d 988, 992 (11th Cir. 2018).

²⁷¹ *See, e.g., Allen v. State Bd. of Elections*, 393 U.S. 544, 569–70 (1969) (finding that a change from an elective official to an appointive official required Section 5 preclearance because the “power of a citizen’s vote is affected . . . ; after the change, he is prohibited from electing an officer formerly subject to the approval of the voters”); *Robinson v. Ala. State Dept. of Educ.*, 652 F. Supp. 484, 485 (M.D. Ala. 1987) (three-judge court) (holding that a municipal resolution “transferring supervision and control of public schools within the city from an elected county board of education to an appointed city board of education, was a change requiring federal preclearance”).

²⁷² *See, e.g., Lee v. Chambers Cnty. Bd. of Educ.*, 849 F. Supp. 1474, 1479 (M.D. Ala. 1994) (observing that “the formation and operation of a separate school system had been twice denied pre-clearance by the Department of Justice”); *Robinson*, 652 F. Supp. at 485 (enjoining a municipal school separation until that separation obtained preclearance under Section 5).

1. *Settlements under the Voting Rights Act*

In *O’Rear v. City of Carbon Hill*, Black and white voters sued the City of Carbon Hill. The complaint focused on malapportionment and alleged violations of the Fourteenth and Fifteenth Amendments, but also included a claim under the Voting Rights Act and sought a declaration that “Carbon Hill abrogated its duty to redraw City Council district lines prior to the 2012 election.”²⁷³ The plaintiffs asked the court to order Carbon Hill to “determine the appropriate council district lines” and to hold “an immediate new election for [the] City Council.”²⁷⁴ In response to this litigation, Carbon Hill reapportioned its city council, but this reapportionment did not appear to increase the number of majority-Black council districts. In February 2016, the parties signed a settlement and the court retained jurisdiction to enforce it.²⁷⁵

In *Alabama State Conference of the NAACP v. City of Pleasant Grove*, Black voters sued the City of Pleasant Grove under Section 2 and the Constitution to challenge the at-large method of electing the city council. Despite a 44% Black population and several recent campaigns by Black candidates, no Black person had ever won a seat on the Pleasant Grove city council.²⁷⁶ The court also rejected Pleasant Grove’s motion to dismiss and concluded that the “Plaintiffs’ allegations of discriminatory intent are sufficient” to allege a constitutional violation.²⁷⁷

In October 2019, as a part of a settlement, the court ordered Pleasant Grove to change from an at-large system to a cumulative voting system.²⁷⁸ The court “found that such a remedy is appropriate and an effective way to eliminate any potential vote dilution within Pleasant Grove.”²⁷⁹ As a result of the new system, three Black people won seats on the city council in August

²⁷³ R & R at 2, *O’Rear v. City of Carbon Hill*, No. 6:14-cv-00995-SLB (N.D. Ala., July 22, 2015), ECF No. 20, *adopted*, No. 6:14-cv-0995-SLB (N.D. Ala. Sept. 8, 2015), ECF 21, 2015 WL 5286140.

²⁷⁴ *Id.*

²⁷⁵ Order, *O’Rear v. City of Carbon Hill*, No. 6:14-cv-0995-SLB (N.D. Ala. Feb. 29, 2016), ECF No. 26.

²⁷⁶ Ala. State Conf. of NAACP v. City of Pleasant Grove, 372 F. Supp. 3d 1333, 1337 (N.D. Ala. 2019).

²⁷⁷ *Id.* at 1341.

²⁷⁸ Consent Decree at 2, Ala. State Conf. of NAACP v. City of Pleasant Grove, No. 2:18-cv-02056-LSC, 2019 WL 5172371 (N.D. Ala. Oct. 11, 2019), ECF 41.

²⁷⁹ *Id.* at 4.

2020.²⁸⁰ And, in 2022, Eric Calhoun, a Black plaintiff in the VRA litigation, was appointed to the city council to replace a white councilman.²⁸¹ Mr. Calhoun's appointment cemented the city council's 4-1 Black majority.²⁸² Before the appointment, the city's white mayor had regularly exercised his option to vote on city issues, leading to multiple 3-3 splits.²⁸³

2. *Voketz v. City of Decatur*

In 2010, Gary Voketz, a white resident of the City of Decatur, successfully campaigned for a referendum to change Decatur's form of government from mayor-council to council-manager.²⁸⁴ Under a mayor-council government, the city is led by a mayor elected at-large and five city council members elected from single-member districts.²⁸⁵ The consent order entered in *Dillard* required that one of the five Decatur city council voting districts have a Black voting-age majority.²⁸⁶ But, under a council-manager government, Decatur would retain the five-member city council but would modify how those members were elected: two members would be elected at large—one of whom would serve as mayor—and the other three councilmembers would be elected by single-member districts.²⁸⁷

In 2011, in response to the referendum and a new census, Decatur sought to draw three single member districts that equalized population and included at least one majority Black district.²⁸⁸ But Decatur found it impossible to satisfy the one-person, one-vote rule and maintain the majority-Black district.²⁸⁹ The city instead adopted a map that eliminated the majority-Black district and replaced it with a 34.96% Black population district.²⁹⁰ After Decatur submitted that map to the Justice Department for Section 5

²⁸⁰ Anna Beahm, *Pleasant Grove Makes History; Elects First Black Councilors*, ALA. MEDIA GRP. (Aug. 26, 2020, 4:31 PM), <https://www.al.com/news/2020/08/pleasant-grove-makes-history-elects-first-blacks-to-council.html> [<https://perma.cc/65C8-3GEZ>].

²⁸¹ Sam Levine, *He Challenged His All-White City Council in Alabama. Now He's on It*, THE GUARDIAN (Aug. 25, 2022, 6:00 AM), <https://www.theguardian.com/us-news/2022/aug/25/alabama-pleasant-grove-city-council-black-majority> [<https://perma.cc/V629-4FTZ>].

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Voketz v. City of Decatur*, 904 F.3d 902, 904 (11th Cir. 2018).

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 904–05.

²⁸⁹ *Id.* at 905.

²⁹⁰ *Id.*

preclearance, the Justice Department sent Decatur a request for “more information.”²⁹¹ Faced with this request, the Decatur city council realized that the additional information likely would show that the new map violated Section 5.²⁹²

To avoid a Section 5 objection, the city council passed a resolution declaring that “it is mathematically impossible for Decatur to have three single-member voting districts with each district containing as nearly an equal number of people as possible that will not have a retrogressive impact on the Black voters of Decatur.”²⁹³ Instead of responding to the Justice Department’s data request, Decatur withdrew the earlier map and returned to a five single-member district plan that preserved the majority-Black district. The Justice Department then precleared this revised plan.²⁹⁴

Following the end of preclearance, however, in February 2014, Mr. Voketz, the resident who had led the drive for a council-manager government, filed *Voketz v. City of Decatur* in Alabama state court.²⁹⁵ His lawsuit sought a declaratory and injunctive relief to compel Decatur to implement the rejected council-manager plan. Decatur removed the case to federal court based on its defense that a change to a council-manager form of government would violate the VRA.²⁹⁶ And, throughout the case, Decatur continued to argue that moving to a three single-member district plan required eliminating the majority-Black district in violation of the VRA.²⁹⁷

In September 2020, the district court dismissed the case as moot given Alabama’s amendments to the council-manager law in 2018 and 2019.²⁹⁸ These changes to state law required a new referendum and allowed for a council-manager government with either four or six single-member districts.²⁹⁹ Given this procedural ruling, the court did not address the alleged violation of the VRA.

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ Mem. Opinion at 3–4, *Voketz v. City of Decatur*, No. 5:14-cv-00540-AKK (N.D. Ala. Sept. 15, 2020), 2020 WL 5529618, ECF No. 93, *appeal dismissed sub nom. Voketz v. Decatur, Ala.*, No. 20-14359-BB, 2022 WL 16907840 (11th Cir. Aug. 3, 2022).

²⁹⁸ *Id.* at 17.

²⁹⁹ *Id.* at 15.

3. *Settlements under the National Voter Registration Act*

The National Voter Registration Act of 1993 (“NVRA”) creates uniform processes for voter-registration in federal elections in the United States.³⁰⁰ Among other things, the NVRA requires states to offer opportunities to register to vote at motor vehicle and public benefits offices.³⁰¹ While proving a violation of the NVRA does not require evidence of discrimination, in enacting the NVRA, Congress found that “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.”³⁰²

In the last decade, Alabama has agreed to two settlements to remedy its alleged violations of the NVRA. First, in 2013, the Alabama Secretary of State and several state agencies entered a settlement with the Alabama State NAACP to resolve claims that Alabama was violating Section 7 of the NVRA.³⁰³ Section 7 of the NVRA requires public benefits and assistance offices to offer the opportunity to register to vote to anyone who applies for benefits, to renew benefits, or to change their address.³⁰⁴ Because Black Alabamians are disproportionately more likely than whites to receive public benefits,³⁰⁵ Alabama’s violations of Section 7 likely had a racially disparate impact. According to the Alabama NAACP, the State had failed to comply with Section 7’s requirements for many years.³⁰⁶ To remedy these NVRA violations, the settlement agreement required Alabama state agencies to create new coordinator roles and duties, incorporate voter registration

³⁰⁰ National Voter Registration Act, 52 U.S.C. §§ 20501–20511 (1993).

³⁰¹ *Id.* at §§ 20504(a)(1), 20506(a)(2)(A)-(B).

³⁰² *Id.* at § 20501(a)(3).

³⁰³ Settlement Agreement between Ala. NAACP and Ala. Sec’y of State, 23–24 (Dec. 19, 2013), <https://lawyerscommittee.org/wp-content/uploads/2015/06/0397.pdf> [<https://perma.cc/K3BQ-LP7A>].

³⁰⁴ *Id.* at 3, 10.

³⁰⁵ *Selected Population Profile in the United States*, U.S. CENSUS BUREAU: 2019 AM. CMTY. SURV. 1-YEAR ESTIMATES, <https://data.census.gov/cedsci/table?text=s0201&g=0400000US01&y=2019&tid=ACSSPP1Y2019.S0201> [<https://perma.cc/5B6S-DF4U>] (last visited July 23, 2021).

³⁰⁶ Press Release, Lawyer’s Comm. for Civ. Rts. Under L., *Alabama NVRA Compliance (non-litigation agreements)* (Dec. 19, 2013), <https://www.lawyerscommittee.org/project/alabama-nvra-compliance-non-litigation-agreements/> [<https://perma.cc/5L3M-TCGH>].

services into the computerized applications, and re-train office staff.³⁰⁷ The agreement expired in November 2016.³⁰⁸

The second NVRA settlement came in 2015. The Alabama Secretary of State and ALEA resolved a U.S. Department of Justice investigation concerning Alabama's failure to comply with Section 5 of the NVRA.³⁰⁹ Section 5 requires Alabama's driver's license offices and agencies to offer voter-registration services.³¹⁰ The settlement required Alabama to implement new and remedial measures, including offering people the opportunity to register to vote or update their voter-registration information online.³¹¹

Since Alabama's implementation of the remedial measures in these settlements, over 1.3 million Alabama voters have become registered voters.³¹²

VI. OTHER RECENT VOTING-RELATED LITIGATION

Other voting litigation in Alabama underscores the difficulty that Black voters face when seeking judicial remedies to discriminatory voting systems and the ways that the State has sought to attack voters of color. This highlights the urgency of a modern VRA that both restores the preclearance system of the past and meets the challenges of the present by addressing the racially motivated measures and techniques that seek to suppress Black political power in Alabama.

A. *Felony Disfranchisement Litigation*

Alabama has a long history of using felony disfranchisement laws to discriminate against Black voters. The current felony disfranchisement law

³⁰⁷ Settlement Agreement between Ala. NAACP and Ala. Sec'y of State 3-9 (Dec. 19, 2013), <https://lawyerscommittee.org/wp-content/uploads/2015/06/0397.pdf> [<https://perma.cc/P98N-F7K7>].

³⁰⁸ *Id.* at 23.

³⁰⁹ Memorandum of Understanding between Civ. Rts. Div, U.S. Dep't of Just. and Ala. Sec'y of State 1 (Nov. 13, 2015), <https://www.justice.gov/opa/file/793121/download> [<https://perma.cc/H456-RTGT>].

³¹⁰ *Id.*

³¹¹ *Id.* at 3-7.

³¹² Press Release, Ala. Sec'y of State, Alabama's 3.5 Million Registered Voters Continues to Shatter State Records (July 25, 2019), <https://www.sos.alabama.gov/newsroom/alabamas-35-million-registered-voters-continues-shatter-state-records> [<https://perma.cc/DU4P-8C32>].

has its roots in Alabama's 1901 Constitution. The law permanently strips people who are convicted of "crimes of moral turpitude" of the right to vote.³¹³ In 1985, the U.S. Supreme Court struck down the disfranchisement law and found that the 1901 constitutional convention had defined crimes of moral turpitude in a manner blatantly designed to discriminate against Black people.³¹⁴ In the 1990s, however, the Legislature reenacted the felony disfranchisement law and tried to purge the law of its discriminatory intent.

Today, this law disfranchises more than 250,000 Alabamians or 7.6% of the statewide voting-age population, including over 15% of the Black male voting-age population.³¹⁵ Until recently, the law's list of disfranchising crimes of "moral turpitude" was ill-defined and vague.³¹⁶ State officials have repeatedly used this vagueness to enforce the law in a way that discriminates against Black voters.

For example, in the 1998 Jefferson County Sheriff's race, the incumbent sheriff sought to overturn his re-election loss by targeting Black absentee voters.³¹⁷ In litigation following the election, a state court judge described the "frightening use of large-scale computer searches and criminal investigations" by the incumbent sheriff to target "persons simply because they voted, simply because they live in Bessemer, and simply because they are of African-American origin."³¹⁸ In 2006, the sheriff and his attorney were convicted of illegally using federal databases to run the background checks on absentee voters in the majority-Black City of Bessemer to "investigate" those people who might have been ineligible to vote under the felony disfranchisement law.³¹⁹

³¹³ Felony Voter Disqualification Act, ALA. CODE § 17-3-30.1(b)(1)(a)(19).

³¹⁴ *Hunter v. Underwood*, 471 U.S. 222, 233 (1985).

³¹⁵ *Thompson v. Alabama*, 293 F. Supp. 3d 1313, 1322 (M.D. Ala. 2017); *see also* Julie Ebenstein, *The Alabama Governor Just Signed a Bill That Will Restore Voting Rights to Thousands of Alabamians*, ACLU BLOG (May 26, 2017, 12:45 PM), <https://www.aclu.org/blog/voting-rights/voter-restoration/alabama-governor-just-signed-bill-will-restore-voting-rights> [<https://perma.cc/H6AD-G44P>].

³¹⁶ Felony Voter Disqualification Act § 17-3-30.1(c)(1)-(48).

³¹⁷ *Boxx v. Bennett*, 50 F. Supp. 2d 1219, 1232 (M.D. Ala. 1999) (three-judge court) (Thompson, J., concurring).

³¹⁸ *Id.*

³¹⁹ *See* *United States v. Jordan*, 582 F.3d 1239, 1242 (11th Cir. 2009) (affirming the convictions of Jefferson County Sheriff Jimmy Woodward and his lawyer, Albert Jordan); *see also* *United States v. Jordan*, 316 F.3d 1215, 1231 (11th Cir. 2003) (noting that the sheriff's focus on the City of Bessemer, in which the majority of voters were African American, and that the sheriff and his attorney in running the background checks had sought to "avoid a charge of race discrimination").

In 2005, in another example of the disastrous misapplication of the felony disfranchisement law, the Alabama Secretary of State began incorrectly instructing local registrars to deny registration to persons with any felony conviction, including those people whose convictions did not involve moral turpitude. Several voters sued the Secretary in state and federal court challenging this change in the law.³²⁰ In response to the lawsuit, the Secretary and Alabama Attorney General conceded that the Secretary had given improper guidance to registrars and that people without convictions for crimes of moral turpitude should be registered.³²¹ The Secretary also issued revised registration forms to clarify that only “disqualifying felonies” lead to disfranchisement.³²²

In fall 2008, the Alabama Department of Corrections (“ADOC”) was sued by a Black voting rights activist and reverend who was seeking to enter state prisons to register eligible people to vote. Earlier in the year, ADOC commissioners had allowed the reverend to visit prisons to educate and register imprisoned people who remained eligible voters because their felony convictions did not involve crimes of “moral turpitude.”³²³ In response to a news article about this voter registration effort, the chair of the Alabama Republican Party e-mailed the ADOC Commissioner and stated that Republicans do “not support the registering of individuals who have committed crimes and are currently incarcerated in the penal system.”³²⁴ The chair baselessly raised the specter of voter fraud. After the letter, the ADOC denied the reverend’s access to prisons. Soon thereafter, the reverend sued the ADOC for relief in federal court.³²⁵ Shortly thereafter, the ADOC settled the lawsuit and allowed the reverend to continue his voter registration efforts.³²⁶

³²⁰ See, e.g., *Chapman v. Gooden*, 974 So. 2d 972, 976 (Ala. 2007) (a case involving a class of voters who had been convicted of felonies and denied the right to vote, regardless of whether their offenses constituted felonies of “moral turpitude”); *Gooden v. Worley*, No. 2:05-CV-02562-WMA, 2006 WL 8437414, at *1 (N.D. Ala. May 26, 2006) (a lawsuit brought against the Alabama Secretary of State alleging that the plaintiffs were denied their right to vote because of their felony convictions).

³²¹ *Chapman*, 974 So. 2d at 980.

³²² *Id.*

³²³ Compl. at 9, *Glasgow v. Allen*, No. 2:08-cv-00801-WKW-SRW (M.D. Ala. Dec. 10, 2013), ECF No. 1.

³²⁴ *Id.* at 12–13.

³²⁵ *Id.* at 5–6.

³²⁶ See, e.g., *Directions to Clerk, Glasgow v. Allen*, No. 2:08-cv-00801-WKW-SRW (M.D. Ala. Nov. 12, 2008), ECF No. 11; *Joint Stipulation & Mot. for Dismissal with Prejudice, Glasgow v. Allen*, No. 2:08-cv-00801-WKW-SRW (M.D. Ala. Nov. 7, 2008), ECF No. 10.

Most recently, in *Thompson v. Merrill*, Black voters again sued to challenge Alabama's felony disfranchisement law. The plaintiffs alleged that the very term "moral turpitude" has racist roots because of its origins in the 1901 Constitution, which was enacted for the purpose of establishing white supremacy.³²⁷ In response to the lawsuit and local advocacy, in 2017, the State Legislature passed a bill fully delineating and narrowing the list of crimes of "moral turpitude."³²⁸ In December 2020, the district court granted summary judgment to Alabama. The court found that "the change made to the Alabama Constitution through an amendment which re-enacted the moral turpitude provision and which was developed and proposed by the legislature and adopted by the electorate was sufficient to remove the taint of discriminatory intent present in 1901."³²⁹ As of August 2021, the case remains ongoing.

B. Unsuccessful Voting Rights Act Litigation

In *Kelley v. Harrison*, a group of Black voters are currently suing the Alabama State Democratic Executive Committee ("SDEC") and the national Democratic Party.³³⁰ The federal complaint alleges that new rules governing the method of electing and appointing members of the SDEC violate a 1991 consent order and that these new rules were adopted with the discriminatory purpose or result of diluting Black voting strength in violation of the VRA and the Fourteenth and Fifteenth Amendments to the U.S. Constitution.³³¹ The court dismissed the case on the pleadings, but the matter is currently on appeal before the Eleventh Circuit Court of Appeals.

In *Alabama State Conference of the NAACP v. Alabama*, the plaintiffs challenged the at-large method of election for Alabama appellate judges, including the Alabama Supreme Court, Court of Criminal Appeals, and Court of Civil Appeals. The plaintiffs alleged that the at-large system diluted the Black vote, resulting in every appellate judge in the State being white.³³²

³²⁷ *Thompson v. Merrill*, 505 F. Supp. 3d 1239, 1255 (M.D. Ala. 2020).

³²⁸ *Id.* at 1252.

³²⁹ *Id.* at 1259.

³³⁰ Mem. Op. and Order at 1, *Kelley v. Harrison*, No. 1:21-cv-00056-RAH-SMD, 2021 WL 3200989 (M.D. Ala. July 28, 2021), ECF 42.

³³¹ *Id.* at 2.

³³² Ala. State Conf. of NAACP v. Alabama, No. 2:16-CV-731-WKW, 2020 WL 583803, at *2 (M.D. Ala. Feb. 5, 2020).

Following a trial, the court ruled in favor of the State. The court accepted that the plaintiffs' statistical evidence proved the existence of racially polarized voting, but it found that "the losses of candidates favored by African-American voters are the result of several partisan divides that have nothing to do with race."³³³ The court ultimately held that "Alabama's at-large, statewide system of electing appellate judges today is benign of racial hostility, either overt or covertly lurking in the recesses of § 2, and is not racially discriminatory either in its adoption or maintenance."³³⁴

In *Lewis v. Governor of Alabama*, two Black workers challenged a state law that prohibited municipalities, like Birmingham, from increasing the local minimum wage.³³⁵ Birmingham has a population that is 72% Black and is controlled by a majority-Black city council.³³⁶ Birmingham passed an ordinance raising the minimum wage to \$10.10 an hour in the city.³³⁷ In response, the Legislature enacted Act No. 16-28, which effectively nullified Birmingham's local ordinance.³³⁸

The plaintiffs alleged that Act No. 16-28 violated Section 2 of the VRA and the Fourteenth Amendment because the majority-white State Legislature had sought to deny autonomy to majority-Black cities.³³⁹ Although the district court dismissed the case, a three-judge panel for the U.S. Court of Appeals for the Eleventh Circuit reversed. In the initial panel opinion, the court rejected the Section 2 claim but found that the plaintiffs "stated a plausible claim that the Minimum Wage Act had the purpose and effect of discriminating against Birmingham's black citizens, in violation of the Equal Protection Clause of the Fourteenth Amendment."³⁴⁰ In its decision, the appellate court summarized the evidence of racial discrimination:

The plaintiffs' amended complaint presents detailed factual allegations which go to the heart of multiple *Arlington Heights* considerations, including the disproportionate effect of the Minimum Wage Act on Birmingham's poorest black residents; the rushed, reactionary, and racially polarized nature of the legislative process;

³³³ *Id.* at *4.

³³⁴ *Id.* at *77.

³³⁵ *Lewis v. Governor of Ala. (Lewis I)*, 896 F.3d 1282, 1287 (11th Cir. 2018), *on reh'g en banc*, 944 F.3d 1287 (11th Cir. 2019).

³³⁶ *Lewis I*, 896 F.3d at 1287-88.

³³⁷ *Id.* at 1287.

³³⁸ *Id.* at 1288.

³³⁹ *Id.* at 1294.

³⁴⁰ *Id.* at 1299.

and Alabama's historical use of state power to deny local black majorities authority over economic decision-making. The Minimum Wage Act responded directly to the legislative efforts of the majority-black Birmingham City Council, which represents more black citizens (and more black citizens living in poverty) than any other city in Alabama. The Act swiftly nullified efforts of those Birmingham City Council members to benefit their majority-black constituents even though the Alabama legislature had previously "failed to take any action to establish a statewide minimum wage law and had [] been indifferent to efforts to establish such a law." The Act was introduced by a white representative from Alabama's least diverse area, with the help of fifty-two other white sponsors, and was objected to by all black members of the House and Senate. And it was accelerated through the legislative process in sixteen days with little or no opportunity for public comment or debate. These facts plausibly imply discriminatory motivations were at play.³⁴¹

Unfortunately, the panel decision was overruled when the Eleventh Circuit took the case en banc in 2019.³⁴² The full court held that the plaintiffs lacked standing to sue the Alabama Attorney General and declined to address the merits.³⁴³ The court ruled that, because the Attorney General was not responsible for enforcing the law, he could not redress the alleged injuries.³⁴⁴

D. 2020 Census Litigation

Section 2 of the Fourteenth Amendment to the Constitution requires that congressional "[r]epresentatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed."³⁴⁵ The clear command of the Constitution that congressional representation is to be based on a count of every resident, regardless of that person's citizenship or immigration status. Nonetheless, Alabama filed a lawsuit that unironically made the odious claim that undocumented immigrants are not "persons" within the meaning of the Constitution, and therefore should not be counted in the

³⁴¹ *Id.* at 1295 (citations omitted).

³⁴² *Lewis v. Governor of Ala. (Lewis II)*, 944 F. 3d 1287, 1290 (11th Cir. 2019) (en banc).

³⁴³ *Id.* at 1306.

³⁴⁴ *Id.* at 1296-98.

³⁴⁵ U.S. CONST. amend XIV, § 2. *Cf.* The Indian Citizenship Act, 8 U.S.C. § 1401(b) (1924) (declaring that all Native Americans born in the United States are citizens and therefore rendering moot the Fourteenth Amendment's exclusion of "Indians not taxed" provision).

decennial census or congressional reapportionment.³⁴⁶ This theory not only lacks any basis in the text of the Constitution, but it echoes racist constitutional paradigms of the past, like the Three-Fifths Clause, which only partially counted enslaved Black people in reapportionment,³⁴⁷ and the *Dred Scott v. Sanford* decision, which held that Black people are not and cannot be U.S. citizens.³⁴⁸

In *Alabama v. U.S. Department of Commerce*, the State and Congressman Mo Brooks sued the U.S. Department of Commerce and Census Bureau, which administer the decennial Census.³⁴⁹ Alabama challenged the Census Bureau's policy of including all U.S. residents, whether citizens or not, in the Census count totals used for apportioning congressional seats and electoral college votes.³⁵⁰ Alabama alleged that this policy, which counted undocumented immigrants, violated the Fourteenth Amendment to the U.S. Constitution.³⁵¹ Alabama also claimed that including undocumented immigrants in the Census count would lead to the State losing one congressional seat and one electoral college vote; conversely, if undocumented immigrants are not counted, Alabama alleged that it would keep its current number of representatives and electoral votes.³⁵²

Latinx voters, represented by the Mexican American Legal Defense and Educational Fund ("MALDEF"), intervened in the litigation.³⁵³ MALDEF's clients also filed a cross-claim against the federal government and asked the court to declare that any attempt to remove undocumented immigrants from the congressional apportionments for the states would be unconstitutional.³⁵⁴

³⁴⁶ *Alabama v. United States Dep't of Com.*, 396 F. Supp. 3d 1044, 1048-49 (N.D. Ala. 2019).

³⁴⁷ U.S. CONST. art. I, § 2, cl. 3.

³⁴⁸ *Dred Scott v. Sandford*, 60 U.S. 393, 404-05 (1857).

³⁴⁹ *Alabama v. United States Dep't of Com.*, 396 F. Supp. 3d at 1046.

³⁵⁰ *Id.* at 1048-49.

³⁵¹ *Id.*

³⁵² *Id.* at 1049.

³⁵³ Presse Release, MALDEF, A Timeline of Alabama's Attempt to Leave Undocumented Immigrants Out of the Census (Aug. 5, 2020), <https://www.maldef.org/2020/08/a-timeline-of-alabamas-attempt-to-leave-undocumented-immigrants-out-of-the-census/> [https://perma.cc/R9WR-92BQ].

³⁵⁴ *Id.*

In 2020, the district court stayed the case,³⁵⁵ placing it on hold due to the pending Supreme Court decision in *Department of Commerce v. New York*.³⁵⁶ When the *New York* case failed to resolve the issue of whether noncitizens can be excluded from the Census,³⁵⁷ the Alabama case resumed. In January 2021, however, MALDEF dismissed its cross-claim after newly inaugurated President Joseph Biden signed an executive order “affirming that all persons in the United States shall be counted for purposes of the 2020 Census data used for reapportionment, as required by the Constitution.”³⁵⁸ Finally, in May 2021, the parties voluntarily dismissed the case because, upon the release of the 2020 reapportionment data, Alabama kept all seven of its congressional seats.³⁵⁹

VII. RACIALLY POLARIZED VOTING AND RACIAL APPEALS

The final indicators of “racial bias in the relevant voting community” are that, even today, highly racially polarized voting and the overt and subtle use of racial appeals persist in Alabama.

Racially polarized voting occurs where a racial group in the numerical minority tends to vote as a bloc for one candidate (or slate of candidates) and the racial majority tends to vote for another. The persistence of racially polarized voting in Alabama is significant because, “[i]n an environment characterized by racially polarized voting, politicians can predictably manipulate elections — either by drawing districts or setting an issue for a referendum — to ‘minimize or cancel out minority voters’ ability to elect their preferred candidates.”³⁶⁰ Racial polarization “increases the vulnerability of racial minorities to discriminatory changes in voting law” because it both places minorities at higher risk of being “systematically outvoted and having their

³⁵⁵ Press Release, MALDEF, Statement on Federal Stay in Alabama Census Lawsuit (Nov. 2, 2020), <https://www.maldef.org/2020/11/maldef-statement-on-federal-stay-in-alabama-census-lawsuit/> [https://perma.cc/47M7-RYF7].

³⁵⁶ *Dep’t of Com. v. New York*, 139 S.Ct. 2551 (2019).

³⁵⁷ *Id.* at 2575-76.

³⁵⁸ Press Release, MALDEF, MALDEF Dismisses its Cross-Claim in Alabama Census Lawsuit (Jan. 27, 2021), <https://www.maldef.org/2021/01/maldef-dismisses-its-cross-claim-in-alabama-census-lawsuit/> [https://perma.cc/CWM5-7QQM].

³⁵⁹ Press Release, MALDEF, Statement on the Dismissal of Alabama Apportionment Lawsuit (May 4, 2021), <https://www.maldef.org/2021/05/maldef-statement-on-the-dismissal-of-alabama-apportionment-lawsuit/> [https://perma.cc/Z3V7-G39H].

³⁶⁰ *United States v. McGregor*, 824 F. Supp. 2d 1339, 1346 (M.D. Ala. 2011) (citing *Thornburg v. Gingles*, 478 U.S. 30, 48 (1986)).

interests underrepresented in legislatures” and incentivizes politicians supported by the racial majority to discriminate.³⁶¹

In the past decade, the U.S. Supreme Court, federal courts, and various experts have consistently concluded that voting is racially polarized in statewide and local elections across Alabama.³⁶² In *Alabama Legislative Black Caucus v. Alabama*, for example, the Supreme Court acknowledged in 2015 that “voting in [Alabama State Senate District 36], like that in the State itself, is racially polarized.”³⁶³

In 2022, the three judges in *Milligan* unanimously found that the extensive record, including the testimony of Alabama’s own expert, supported “only one finding: that voting in Alabama, and in the districts at issue in this litigation, is racially polarized.”³⁶⁴ In 2020, another district court found the existence of racially polarized voting in statewide judicial and other elections from 2000 to 2020.³⁶⁵ The court ruled that “the white bloc votes normally (but not always) defeated the combined strength of the black votes and white crossover votes such that the black-preferred candidate lost.”³⁶⁶ And, in 2019, a court found that “voting is racially polarized” in biracial elections in Jefferson County “insofar as Black voters are politically cohesive and White people vote sufficiently as a bloc to enable them to defeat Black voters’ preferred candidates.”³⁶⁷

Furthermore, in recent court filings, Alabama and its Secretary of State admitted to the existence of racially polarized voting in primary and general elections. In 2020, a court noted that “the State conceded the second and third *Gingles* preconditions in Plaintiffs’ favor”—that is, the existence of racial bloc voting.³⁶⁸ In *Greater Birmingham Ministries*, the Secretary of State’s expert

³⁶¹ *Shelby County v. Holder*, 570 U.S. 529, 578 (2013) (Ginsberg, J., dissenting).

³⁶² *See, e.g., ALBC*, 575 U.S. 254, 277 (2015) (recognizing that voting “in the State itself, is racially polarized”); *Greater Birmingham Ministries v. Merrill*, 284 F. Supp. 3d 1253, 1258 (N.D. Ala. 2018) (“There was racially polarized voting in both the 2008 and 2010 [statewide] elections.”); *McGregor*, 824 F. Supp. 2d at 1346 (“The evidence further demonstrated that black voters tend to be Democrats.”).

³⁶³ *ALBC I*, 575 U.S. at 277.

³⁶⁴ *Milligan*, 582 F. Supp. 3d 924, 1018 (N.D. Ala. 2022).

³⁶⁵ *Ala. State Conf. of NAACP v. Ala. (NAACP)*, No. 2:16-CV-731-WKW, 2020 WL 583803, at *35 (M.D. Ala. Feb. 5, 2020).

³⁶⁶ *Id.*

³⁶⁷ *Jones v. Jefferson Cnty. Bd. of Educ.*, No. 2:19-cv-01821, 2019 WL 7500528, at *2 (N.D. Ala. Dec. 16, 2019).

³⁶⁸ *NAACP*, 2020 WL 583803, at *34.

“conceded that there was racially polarized voting . . . in Alabama in the 2008 presidential primary and general elections and the 2010 legislative elections.”³⁶⁹ In a statement of stipulated facts from that case, the Secretary agreed that:

According to exit polls, less than 20% of white Alabamians supported the Democratic candidate in the 2004, 2008, and 2012 presidential elections. In November 2008, Sen. John McCain (R) won both Alabama and 90% of the white Alabamian vote. Pres. Barack Obama (D) received 92% of the non-white vote. Pres. Obama received 10% of the white Alabama vote, nine points less than what Sen. John Kerry received from whites in 2004. In 2012, 15% of white and 95% of Black Alabamians voted for Pres. Obama. In the 2008 U.S. Senate race, State Sen. Vivian Figures (D), who is Black, won 90% of the Black vote. Incumbent Sen. Jeff Sessions (R) received 89% of the white vote.³⁷⁰

Racially polarized voting results in part from the use of racial campaign appeals. This is because racial appeals serve to “divide[] the community” and generate “animosities” that solidify racial blocs and drive racially polarized voting.³⁷¹ As one expert explained in *Milligan*, a racial appeal occurs when a candidate is makes an appeal that is “intended to encourage a racial group to vote bloc.”³⁷² The *Milligan* court also identified several examples of extreme racial appeals in recent congressional campaigns:

First, when a former Chief Justice of the Alabama Supreme Court, Roy Moore, ran for Senate in 2017, he won the Republican Party nomination. In 2011, the year before he was elected to the Alabama Supreme Court, he said during a radio interview that the amendments to the Constitution that follow the Tenth Amendment (including the Thirteenth Amendment, which abolished slavery, the Fourteenth Amendment, which requires States to provide equal protection under the law to all persons, and the Fifteenth Amendment, which provides that the right to vote shall not be denied or abridged on the basis of color or previous enslavement) have “completely tried to wreck the form of government that our forefathers intended.” During his 2017 Senate campaign, Mr. Moore acclaimed the antebellum period in the South: “I think it was great at the time when families were united — even though we had slavery.

³⁶⁹ Corrected Joint Status Report, *Greater Birmingham Ministries v. Merrill*, No. 2:15-cv-02193-LSC, 2018 WL 526619, at ¶ 297 (N.D. Ala. Jan. 9, 2018).

³⁷⁰ *Id.* at ¶ 298.

³⁷¹ *Meek v. Metropolitan Dade Cnty.*, 985 F.2d 1471, 1487 (11th Cir. 1993).

³⁷² 582 F. Supp. 3d at 975.

They cared for one another. People were strong in the families. Our families were strong. Our country had a direction.”

Second, Congressman Mo Brooks, who currently represents District 5 and is now running for the open Senate seat, has repeatedly claimed that Democrats are waging a “war on whites.” Although Defendants suggest that the plaintiffs have misunderstood other campaign ads that they claim are racial appeals, Defendants do not contest these two examples, which we find are obvious and overt appeals to race.

Third, even if [Congressman Bradley] Byrne did not intend his campfire commercial to be a racial appeal (a question that we need not and do not decide), a reasonable viewer might have perceived it as one. We have reviewed the ad. It opens with two images superimposed onto one another: one of then-Congressman Byrne seated in darkness at a campfire, and another of a plane crashing into the World Trade Center and exploding. Mr. Byrne says: “When the towers fell, I knew my brother would be going to war. Dale was a true patriot. I can't bring him back. I miss him every day.” The next image is of Mr. Byrne's face, the one after that is of him holding a snapshot of a decorated military serviceman photographed in front of an American flag, and the one after that is of him sitting by the campfire and speaking. He next says: “It hurts me to hear Ilhan Omar cheapening 9/11, entitled athletes dishonoring our flag, the Squad attacking America.” While he speaks that sentence, the shot transitions several times: it first shows a close-up of glowing embers with the face of Congresswoman Omar, who is a person of color and is wearing a hijab, superimposed onto the embers; it then transitions to an image of professional football player Colin Kaepernick, who is a person of color and is wearing his hair in an Afro, superimposed onto darkness with a billow of smoke; and it finally transitions to an image of four women of color, including Congresswoman Omar, Congresswoman Alexandria Ocasio-Cortez and two other congresswomen superimposed onto the darkness just above the campfire. Next, Mr. Byrne appears in front of the campfire and states: “Dale fought for that right, but I will not let them tear our country apart. That's why I'm running for Senate.” We do not disagree with the Milligan plaintiffs and the Caster plaintiffs that the video of a white man narrating as images of prominent persons of color (and only persons of color) are juxtaposed with images of the 9/11 terrorist attacks, in or on or hovering above a crackling fire, could be understood as a racial appeal.³⁷³

The Gardendale secessionists, for example, sought to promote tax increases to fund their racist separate schools plan by circulating a flyer that

³⁷³ *Id.* at 1023-24.

showed a young white girl and asked, “Which path will Gardendale choose?”³⁷⁴ The flyer then listed several majority-Black cities, like Hueytown and Center Point, that had remained a part of the county school system followed by a list of predominately white cities that had formed separate school systems.³⁷⁵ The flyer described these white cities as “some of the best places to live in the country.”³⁷⁶ In its order altering the Jefferson County school board’s elections, the court cited this flyer as evidence of “recent political campaigns related to the schools . . . us[ing] racial appeals.”³⁷⁷

Which path will Gardendale choose?



Places that chose NOT to form and support their own school system:

- ✓ Adamsville/Forestdale
- ✓ Hueytown
- ✓ Pleasant Grove
- ✓ Center Point/Huffman

Communities that chose to form and support their own school system, and are listed as some of the best places to live in the country:

- ✓ Homewood
- ✓ Hoover
- ✓ Vestavia
- ✓ Trussville

On which list will you place Gardendale?

Dr. Joseph Bagley, a historian who testified as the plaintiffs’ expert witness in *Milligan* and *People First*, described several other recent examples of racial appeals:³⁷⁸

³⁷⁴ Stout v. Jefferson Cnty. Bd. of Educ., 882 F.3d 988, 998 (11th Cir. 2018).

³⁷⁵ *Id.*

³⁷⁶ *Id.* at 997.

³⁷⁷ *Jones*, 2019 WL 7500528, at *3.

³⁷⁸ Expert Rep. of Dr. Joseph Bagley, *People First of Ala. v. Merrill*, No. 2:20-cv-00619-AKK (N.D. Ala. Jul. 24, 2020) (on file with the author).

Representative Will Dismukes has been called upon by Democrats to resign after publicly lobbying to maintain state funding for a Confederate memorial park and posting photographs on social media that show him attending a “Confederate Flag Day” celebration. Dismukes is the “chaplain” of the “Prattville Dragoons,” a group that is affiliated with the Sons of Confederate Veterans. A post on the group’s website laments that recently “The entire American corporate industrial complex bent over backwards patronizing the Black Lives Matter movement in the wake of the death of the drugged career criminal in Minneapolis,” referring to George Floyd. Dismukes himself has posted columns on the site, telling members who are, like himself, angry over the removal of Confederate monuments to “Turn that anger in to something constructive as our ancestors did by rebuilding their homes and lives during the hateful years of Reconstruction. They were courageous during the War for Southern Independence and afterwards and we, their descendents [sic] must be as well.”³⁷⁹

Finally, Secretary of State John Merrill has used racialized language to deride measures that would make it easier for Black people and other citizens to register and to vote. He has insisted that voting should not be easy and that initiatives like voting by mail or automatic registration represent “a sorry, lazy way out.” Merrill believes that “Just because you turned 18 doesn’t give you the right to do anything.” He has claimed that people who would likely benefit from expanded voting opportunities are “lazy” and disrespect civil rights icons like Rosa Parks and Congressman John Lewis who fought for Black people to have the right to vote. Merrill said, “I’m not going to embarrass them by allowing somebody that’s too sorry to get up off of their rear to go register to vote.” Congressman Lewis supported the kind of measures in question.³⁸⁰

Together, racial appeals and white bloc voting contribute to the fact that there are no statewide Black elected officials in Alabama.³⁸¹ Only two Black people have ever been elected to statewide office in Alabama. Oscar Adams, who was appointed to the Alabama Supreme Court in 1980 and won elections in 1982 and 1988.³⁸² And Ralph Cook, who was appointed to the Alabama Supreme Court to replace Justice Adams and won reelection in 1994.³⁸³ A second Black person, John England, was also later appointed to

³⁷⁹ *Id.* at 37.

³⁸⁰ *Id.*

³⁸¹ *Id.* at 38.

³⁸² *Id.*

³⁸³ *Id.*

the Alabama Supreme Court.³⁸⁴ In 2000, however, both Justice Cook and Justice England lost their reelection bids to white Republican challengers.³⁸⁵

Likewise, after the 2010 elections, racially polarized voting led to a stark racial and partisan divide in the State Legislature. The district court in *Greater Birmingham Ministries* found that:

[T]he 2010 elections produced a Republican landslide and supermajorities in both the Alabama House and Senate, for the first time in 136 years. White Republicans' defeat of white Democrats led to a partisan divide in the Alabama Legislature. Prior to the 2010 election, the House had 60 Democrats, 34 of them white and 26 Black. After the 2010 election, there were 36 Democrats—ten white, 26 Black. In the Senate, the number of Black Democrats remained seven; white Democrats fell from 13 to four. There were no non-white Republicans. Thus, after 2010, 67% of the remaining Democrats were Black Legislators who represented Black districts.³⁸⁶

Unfortunately, in 2022, the Legislature's racial and partisan divide largely persists—there is only one Black Republican in the Alabama House.³⁸⁷

VIII. THE IMPORTANCE OF RESTORING PRECLEARANCE

This report underscores the need for the U.S. Congress to enact the John Lewis Voting Rights Amendment Act. In 1965, Congress passed the VRA out of a recognition that litigation is not sufficient to protect the right to vote for communities of color, particularly in the South.³⁸⁸ Section 5 appropriately put the burden on these jurisdictions to demonstrate that planned changes in state measures or laws affecting the right to vote would not do what they had for decades before—diminish the ability of Black voters to participate in the political process.

In *Shelby County*, the Supreme Court acknowledged that “voting discrimination still exists” and that “Congress may draft another [preclearance coverage] formula based on current conditions.”³⁸⁹ In the years since 2013, plaintiff groups have repeatedly shown that changes to

³⁸⁴ *Id.*

³⁸⁵ Michele L. Jawando & Billy Corriher, *More Money, More Problems: Fleeting Victories for Diversity on the Bench*, CTR. FOR AM. PROGRESS 16 (Oct. 26, 2015), <https://www.americanprogress.org/article/more-money-more-problems-2/> [<https://perma.cc/AX2N-VFC8>].

³⁸⁶ *Greater Birmingham Ministries v. Merrill*, 284 F. Supp. 3d 1253, 1258 (N.D. Ala. 2018).

³⁸⁷ *Milligan*, 582 F. Supp. 3d at 1019.

³⁸⁸ *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966).

³⁸⁹ *Shelby Cnty.*, 570 U.S. at 536, 557.

voting rules in Alabama have had the purpose or effect of discriminating against Black voters.³⁹⁰

Costly and time-consuming litigation would have been spared in the absence of the *Shelby County* decision. For example, the Justice Department likely would have objected to Alabama's photo ID requirement and documentary proof-of-citizenship requirements before they went into effect, but Alabama's anticipation of the *Shelby County* decision left the State largely free to implement both measures after 2013.³⁹¹ Similarly, with the force of Section 5, the Justice Department could have objected to discriminatory local changes, like Evergreen's redistricting or Gardendale's secession, without the need for post hoc remedies or time-consuming litigation.

The preclearance regime also importantly allowed the Attorney General to send federal observers to oversee and monitor elections in Section 5 covered jurisdictions, like Alabama. Federal observers enhanced election security and integrity by ensuring some protection for Black Alabamians who face intimidation or other barriers to casting a ballot.³⁹² Federal observers helped to assure that Black Alabamians had a fair opportunity to cast a ballot ensured the safety, security and integrity of the election process more broadly, making it more fair and secure for all voters.³⁹³

IX. CONCLUSION

Alabama's pattern of racial discrimination in voting since 2006 remains clear. Although voters of color made significant gains as a result of the Voting Rights Act of 1965, the absence of Section 5 preclearance has left them, and other vulnerable populations, open to discrimination by the State and local governments. Without Section 5, white officials, reacting to their majority-white constituents, have enacted new discriminatory measures, reversed past progress in voting rights and restored old, discriminatory practices. Nonetheless, despite years of litigation, some of these new voting changes have yet to be blocked by the federal courts. It is time for the U.S. Congress to act, as it has in times past, to ensure the right to vote is truly available to all Americans.

³⁹⁰ See *supra* note 315, 327-329, 332-344.

³⁹¹ See *supra* note 192-95.

³⁹² James Blacksher et al., *Voting Rights in Alabama: 1982-2006*, 17 S. CAL. REV. L. & SOC. JUST. 249, 271 (2008).

³⁹³ *Id.*

APPENDIX A

VOTING RIGHTS ACT VIOLATIONS* IN ALABAMA, 1998 TO PRESENT

Case Name/Jurisdiction	Date	Additional Info
Tallapoosa County ³⁶³	Feb. 6, 1998	Outcome: § 5 Objection Intent: Yes Issue: County Redistricting Plan (dilution)
<i>Wilson v. Jones</i> (Dallas County), 130 F. Supp. 2d 1315 ³⁶⁴	Aug. 4, 2000	Outcome: Constitutional and § 2 violations Intent: Yes Issue: Racial gerrymandering
City of Alabaster, Shelby County ³⁶⁵	Aug. 16, 2000	Outcome: § 5 objection Intent: Yes Issue: City Annexations (dilution)
<i>Foster v. Jones</i> , Dallas County, Doc. 33, No. 03-0574 ³⁶⁶	Feb. 2, 2004	Outcome: Settlement of 14th Amendment claim Intent: No Issue: Irregularities in Primaries (dilution)
City of Calera, Shelby County ³⁶⁷	Aug. 25, 2008	Outcome: § 5 objection Intent: Yes Issue: City redistricting and Annexations (dilution)

* This chart counts a "Voting Rights Act Violation" as (1) any unwithdrawn objection under Section 3 or Section 5 of the VRA; (2) any final judgment, which has not been overturned on appeal, where a federal or state court has issued an injunction or declaratory judgment after identifying a voting practice that resulted in racial discrimination in violation of Section 2 of the VRA, the Fourteenth Amendment, or the Fifteenth Amendment; or (3) a consent decree, settlement, or other agreement which resulted in the alteration or abandonment of a challenged voting practice. This chart does not count cases that only involved successful racial gerrymander claims as Voting Rights Act Violations.

<i>Allen v. City of Evergreen</i> , Conecuh County, 2014 WL 12607819	Jan. 13, 2014	Outcome: Constitutional and § 2 violations Intent: Yes Issue: City Redistricting Plan and Voter Purges (dilution and denial)
<i>Alabama State NAACP v. City of Pleasant Grove</i> , Jefferson County, 2019 WL 5172371	Oct. 11, 2019	Outcome: Consent Order to settle § 2 claim Intent: No Issue: State laws related to local at-large elections (dilution)
<i>Jones v. Jefferson County Board of Education</i> , 2019 WL 7500528	Dec. 16, 2019	Outcome: § 2 and constitutional violations Intent: Yes Issue: State laws related to local at-large elections (dilution)
<i>People First of Alabama v. Merrill</i> , 491 F.Supp.3d 1076 ³⁶⁸	Sept. 30, 2020	Outcome: § 2 violation (declaratory judgment only) Intent: Yes Issue: State law related to a witness requirement for absentee voting (denial)
<i>Allen v. Milligan</i> , 143 S. Ct. 1487	June 8, 2023	Outcome: § 2 violation (preliminary injunction) Intent: No Issue: Congressional redistricting plan

³⁶³ Letter from Bill Lann Lee, Acting Assistant Att’y Gen., U.S. Dep’t of Just. Civ. Rts. Div., to E. Paul Jones (Feb. 6, 1998), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-2000.pdf> [<https://perma.cc/3DTE-WBQN>].

³⁶⁴ In *Wilson v. Jones*, the white plaintiffs alleged that the court ordered five single-member district plan for electing the Dallas County Commission was “created and utilized for predominantly racial reasons in violation of The Voting Rights Act and the Fourteenth Amendment.” 45 F. Supp. 945, 962 (S.D. Ala. 1999). The court ruled for the plaintiffs and ordered the parties to propose remedial plans. *Id.* at 960-61. Thereafter, the court rejected the proposals of both parties because the plans “made impermissible use of race and thus violate[d] § 2 of the Voting Rights Act.” *Wilson v. Jones*,

130 F. Supp. 2d 1315, 1335 (S.D. Ala. 2000), *aff'd sub. nom.* Wilson v. Minor, 220 F.3d 1297 (11th Cir. 2000).

³⁶⁵ Letter from Bill Lann Lee, Acting Assistant Att’y Gen., U.S. Dep’t of Just. Civ. Rts. Div., to J. Frank Head (Aug. 16, 2000), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-2010.pdf> [<https://perma.cc/388H-XZY7>].

³⁶⁶ *See also Foster*, 2004 WL 7344991, at *1-2 (acknowledging settlements with the Dallas County Probate Judge and Dallas County Sherriff to resolve allegations of a racially discriminatory conspiracy to dilute the Black vote).

³⁶⁷ Letter from Grace Chung Becker, Acting Assistant Att’y Gen., U.S. Dep’t of Just. Civ. Rts. Div., to Dan Head (Aug. 25, 2008), https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/1_080825.pdf [<https://perma.cc/WRL3-DTNE>].

³⁶⁸ In addition to the judgment against the State and Mobile County, the court entered consent orders and settlements to resolve the VRA claim against six other counties. *See, e.g.*, Consent Order, People First of Ala. v. Merrill, No. 2:20-cv-00619 (N.D. Ala. Aug. 21, 2020), ECF No. 181 (Jefferson County); Consent Order, People First of Ala. v. Merrill, No. 2:20-cv-00619 (N.D. Ala. Aug. 21, 2020), ECF No. 182 (Montgomery County); Order, People First of Ala. v. Merrill, No. 2:20-cv-00619 (N.D. Ala. Sept. 4, 2020), ECF No. 216 (Madison County); Order, People First of Ala. v. Merrill, No. 2:20-cv-00619 (N.D. Ala. Sept. 17, 2020), ECF No. 235 (Lee County); Order, People First of Ala. v. Merrill, No. 2:20-cv-00619 (N.D. Ala. Sept. 18, 2020), ECF No. 240 (Wilcox County); Order, People First of Ala. v. Merrill, No. 2:20-cv-00619 (N.D. Ala. Sept. 22, 2020), ECF No. 242 (Lowndes County).