

DEC 26 2012

No. 12-96

RECORD
AND
BRIEFS

IN THE
Supreme Court of the United States

SHELBY COUNTY, ALABAMA,

Petitioner,

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL, et al.,

Respondents.

**ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JULY 20, 2012
CERTIORARI GRANTED NOVEMBER 9, 2012

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The following opinions and orders have been omitted in printing this Joint Appendix because they appear in the appendix of the Petition for a Writ of Certiorari on the following pages:

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APPENDIX A — RELEVANT DOCKET ENTRIES

**United States Court of Appeals
for District of Columbia Circuit**

Court of Appeals Docket #: 11-5256

Docketed: 09/27/2011

**Shelby County, Alabama v. Eric Holder, et al
Appeal From: United States District Court for the
District of Columbia**

Shelby County, Alabama,

Plaintiff - Appellant

v.

**Eric H. Holder, Jr., In his official capacity as Attorney
General of the United States,**

Defendant - Appellee

**Earl Cunningham; Harry Jones; Albert Jones; Ernest
Montgomery; Anthony Vines; William Walker; Bobby
Pierson; Willie Goldsmith, Sr.; Mary Paxton-Lee;
Kenneth Dukes; Alabama State Conference of the
National Association for the Advancement of Colored
People, Inc.; Bobby Lee Harris,**

Intervenors for Defendant - Appellees

Date Filed Docket Text

09/27/2011 US CIVIL CASE docketed. [11-5256]

**09/27/2011 NOTICE OF APPEAL filed [1331956] by
Shelby County, Alabama seeking review**

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of a decision by the U.S. District Court in 1:10-cv-00651-JDB. Assigned USCA Case Number [11-5256]

- 09/30/2011 CLERK'S ORDER filed [1332664] directing party to file initial submissions: APPELLANT docketing statement due 10/31/2011. APPELLANT certificate as to parties, etc. due 10/31/2011. APPELLANT statement of issues due 10/31/2011. APPELLANT underlying decision due 10/31/2011. APPELLANT deferred appendix statement due 10/31/2011. APPELLANT notice of appearance due 10/31/2011. APPELLANT transcript status report due 10/31/2011. APPELLANT procedural motions due 10/31/2011. APPELLANT dispositive motions due 11/14/2011; directing party to file initial submissions: APPELLEE certificate as to parties, etc. due 10/31/2011. APPELLEE entry of appearance due 10/31/2011. APPELLEE procedural motions due 10/31/2011. APPELLEE dispositive motions due 11/14/2011 [11-5256]
- 10/04/2011 DOCKETING STATEMENT FILED [1333349] by Shelby County, Alabama [Service Date: 10/04/2011] [11-5256] (Rein, Bertram)

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- 10/04/2011 CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES FILED [1333350] by Shelby County, Alabama [Service Date: 10/04/2011] [11-5256] (Rein, Bertram)
- 10/04/2011 TRANSCRIPT STATUS REPORT [1333351] by Shelby County, Alabama [Service Date: 10/04/2011]. Status of Transcripts: Final - All transcripts needed for the appeal have been completed and received. [11-5256] (Rein, Bertram)
- 10/04/2011 STATEMENT OF INTENT REGARDING APPENDIX DEFERRAL FILED [1333352] by Shelby County, Alabama [Service Date: 10/04/2011] Intent: AppxNotDeferred [11-5256] (Rein, Bertram)
- 10/04/2011 UNDERLYING DECISION IN CASE submitted [1333353] by Shelby County, Alabama [Service Date: 10/04/2011] [11-5256] (Rein, Bertram)
- 10/04/2011 STATEMENT OF ISSUES FILED [1333354] by Shelby County, Alabama [Service Date: 10/04/2011] [11-5256] (Rein, Bertram)
- 10/04/2011 UNOPPOSED MOTION filed [1333355] by Shelby County, Alabama to expedite case. [Service Date: 10/04/2011] Pages: 16-20. [11-5256] (Rein, Bertram)

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- 10/06/2011** CLERK'S ORDER filed [1333740] considering appellant's unopposed motion to expedite case [1333355-2], The following briefing schedule will apply in this case: APPELLANT Brief due 11/01/2011. Appendix due 11/01/2011. APPELLEE Brief due 12/1/2011, Joint Brief for INTERVENOR-APPELLEE Brief due 12/08/2011, APPELLANT Reply Brief due 12/15/2011 [11-5256]
- 10/07/2011** CLERK'S ORDER filed [1334101] scheduling oral argument before Judges TATEL, GRIFFITH, WILLIAMS Thursday, 01/19/2012 AM [11-5256]
- 10/17/2011** NOTICE filed [1336041] by Mountain States Legal Foundation of intention to participate as amicus curiae. [Disclosure Listing: Not Attached] [Service Date: 10/17/2011] [11-5256] (Lechner, Steven)
- 10/18/2011** STATEMENT FILED [1336179] by Mountain States Legal Foundation with Disclosure Listing [Service Date: 10/18/2011] [11-5256] (Lechner, Steven)
- 10/21/2011** MODIFIED EVENT--NOTICE FILED [1337173] by New York Law School Racial Justice Project of consent to file amicus curiae brief. [Disclosure Listing: Not Applicable to this Party] [Service Date:

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10/21/2011] [11-5256]--[Edited 10/21/2011
by SMC] (Archer, Deborah)

- 10/25/2011 **CONSENT MOTION** filed [1337630] by
Shelby County, Alabama to exceed word
limits in briefs [Service Date: 10/25/2011]
Pages: 1-10. [11-5256] (Rein, Bertram)

- 10/31/2011 **CERTIFICATE AS TO PARTIES,
RULINGS AND RELATED CASES
FILED** [1338950] by Eric H. Holder,
Jr. [Service Date: 10/31/2011] [11-5256]
(Thome, Linda)

- 11/01/2011 **PER CURIAM ORDER** filed [1339162]
granting appellant's motion to exceed word
limits [1337630-2] Before Judges: Tatel,
Griffith and Williams. [11-5256]

- 11/01/2011 **APPELLANT BRIEF** [1339375] filed by
Shelby County, Alabama [Service Date:
11/01/2011] Length of Brief: 17,288 words.
[11-5256] (Rein, Bertram)

- 11/01/2011 **JOINT APPENDIX** [1339376] filed
[Volumes: 1] [Service Date: 11/01/2011]
[11-5256] (Rein, Bertram)

- 11/08/2011 **MODIFIED PARTY FILER--AMICUS
FOR APPELLANT BRIEF** [1340702]
filed by State of Arizona and State of
Georgia [Service Date: 11/08/2011] Length

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of Brief: Brief contains 6,909 words.
[11-5256]--[Edited 11/14/2011 by LMC]
(Forney, Michele)

11/08/2011 **MODIFIED PARTY FILER--AMICUS
FOR APPELLANT BRIEF [1340724]
filed by State of Alabama [Service Date:
11/08/2011] Length of Brief: 5286 words.
[11-5256]--[Edited 11/10/2011 by HTS]
(Neiman, John)**

11/08/2011 **MODIFIED PARTY FILER--NOTICE
filed [1340725] by State of Alabama of
intention to participate as amicus curiae.
[Disclosure Listing: Not Applicable to
this Party] [Service Date: 11/08/2011]
[11-5256]--[Edited 11/10/2011 by HTS]
(Neiman, John)**

11/08/2011 **AMICUS FOR APPELLANT FINAL
BRIEF [1340728] filed by Mountain States
Legal Foundation [Service Date: 11/08/2011]
Length of Brief: 4,097 Words. [11-5256]
(Lechner, Steven)**

11/28/2011 **CONSENT NOTICE filed [1344103] by
Constitutional Accountability Center of
intention to participate as amicus curiae.
[Disclosure Listing: Attached] [Service
Date: 11/28/2011] [11-5256] (Wydra,
Elizabeth)**

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- 12/01/2011** APPELLEE BRIEF [1345212] filed by Eric H. Holder, Jr. [Service Date: 12/01/2011] Length of Brief: 17,500 Words. [11-5256] (Thome, Linda)
- 12/07/2011** UNOPPOSED AMICUS FOR APPELLEE BRIEF [1346200] filed by New York Law School Racial Justice Project [Service Date: 12/07/2011] Length of Brief: 6,718 words. [11-5256] (Archer, Deborah)
- 12/08/2011** MODIFIED PARTY FILER--CORRECTED AMICUS FOR APPELLEE BRIEF [1346623] filed by Constitutional Accountability Center [Service Date: 12/08/2011] Length of Brief: 6,745. [11-5256]--[Edited 12/12/2011 by LMC] (Wydra, Elizabeth)
- 12/08/2011** UNOPPOSED NOTICE filed [1346690] by New York State of intention to participate as amicus curiae. [Disclosure Listing: Not Applicable to this Party] [Service Date: 12/07/2011] [11-5256] (Underwood, Barbara)
- 12/09/2011** MODIFIED DOCKET TEXT--AMICUS FOR APPELLEE BRIEF [1346731] filed by State of California, State of Mississippi and State of New York [Service Date: 12/09/2011] Length of Brief: 5,300 words. [11-5256]--[Edited 12/21/2011 by KRM] (Underwood, Barbara)

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- 12/09/2011 CORRECTED APPELLEE BRIEF [1346895] filed by Alabama State Conference of the National Association for the Advancement of Colored People, Inc., Earl Cunningham, Kenneth Dukes, Willie Goldsmith, Sr., Bobby Lee Harris, Albert Jones, Harry Jones, Ernest Montgomery, Mary Paxton-Lee, Bobby Pierson, Anthony Vines and William Walker [Service Date: 12/09/2011] Length of Brief: 17,403. [11-5256] (Adegbile, Debo)**
- 12/15/2011 APPELLANT REPLY BRIEF [1347956] filed by Shelby County, Alabama [Service Date: 12/15/2011] Length of Brief: 8,732 words. [11-5256] (Rein, Bertram)**
- 01/06/2012 PER CURIAM ORDER filed [1351401] allocating oral argument time as follows: Appellant -- 30 Minutes, Appellee -- 30 Minutes; directing party to file Form 72 notice of arguing attorney - due 01/12/2012. [11-5256]**
- 01/09/2012 FORM 72 submitted by arguing attorney, Bert W. Rein, on behalf of Appellant Shelby County, Alabama. [11-5256] (Rein, Bertram)**
- 01/11/2012 FORM 72 submitted by arguing attorney, Sarah E. Harrington, on behalf of Appellee Eric H. Holder, Jr.. [11-5256] (Harrington, Sarah)**

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- 01/19/2012 ORAL ARGUMENT HELD before Judges Tatel, Griffith and Williams. [11-5256]
- 02/13/2012 TRANSCRIPT [1358151] of oral argument [11-5256]
- 03/20/2012 LETTER FILED [1364728] by Eric H. Holder, Jr. pursuant to FRAP 28j advising of additional authorities [Service Date: 03/20/2012] [11-5256] (Thome, Linda)
- 03/22/2012 LETTER FILED [1365174] by Shelby County, Alabama pursuant to FRAP 28j advising of additional authorities [Service Date: 03/22/2012] [11-5256] (Rein, Bertram)
- 05/18/2012 PER CURIAM JUDGMENT filed [1374368] that the judgment of the District Court appealed from in this cause is hereby affirmed for the reasons in the accompanying opinion . Before Judges: Tatel, Griffith and Williams. [11-5256]
- 05/18/2012 OPINION filed [1374370] (Pages: 63) for the Court by Judge Tatel, DISSENTING OPINION (Pages: 37) by Judge Williams [11-5256]
- 05/18/2012 CLERK'S ORDER filed [1374371] withholding issuance of the mandate. [11-5256]

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- 07/11/2012 **MANDATE ISSUED to Clerk, District Court [11-5256]**
- 07/25/2012 **LETTER filed [1386544] by the Clerk of the Supreme Court of the United States notifying this court of the following activity in the case before it: A petition for writ of certiorari was filed and placed on the docket on 07/24/2012 as No. 12-96. [11-5256]**
- 11/13/2012 **LETTER filed [1404555] by the Clerk of the Supreme Court of the United States notifying this court of the following activity in the case before it: The petition for writ of certiorari was granted on 11/13/2012. [11-5256]**

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U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:10-cv-00651-JDB
SHELBY COUNTY, ALABAMA v. HOLDER

<u>Date Filed</u>	<u>#</u>	<u>Docket Text</u>
04/27/2010	1	COMPLAINT against ERIC H. HOLDER, JR (Filing fee \$ 350, receipt number 4616029261) filed by SHELBY COUNTY, ALABAMA. (Attachments: # 1 Civil Cover Sheet)(dr) (Entered: 04/27/2010)
04/27/2010		SUMMONS (2) Issued as to U.S. Attorney, and U.S. Attorney General (dr) (Entered: 04/27/2010)
04/27/2010	2	NOTICE OF RELATED CASE by SHELBY COUNTY, ALABAMA. Case related to Case No. 10-561. (dr) (Entered: 04/27/2010)
06/08/2010	5	MOTION for Summary Judgment by SHELBY COUNTY, ALABAMA (Attachments: # 1 Text of Proposed Order Proposed Order, # 2 Declaration Declaration of Frank C. Ellis, Jr., # 3 Exhibit Exhibit A, # 4 Exhibit Exhibit B)(Consovoy, William) (Entered: 06/08/2010)

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- 06/11/2010 **6** **MOTION to Intervene by EARL CUNNINGHAM, HARRY JONES, ALBERT JONES, ERNEST MONTGOMERY, ANTHONY VINES, WILLIAM WALKER (Attachments: # 1 Memorandum in Support, # 2 Proposed Responsive Pleading, # 3 Text of Proposed Order)(znmw,) (Entered: 06/14/2010)**
- 06/22/2010 **7** **Memorandum in opposition to re 5 MOTION for Summary Judgment filed by ERIC H. HOLDER, JR. (Attachments: # 1 Exhibit Declaration of Richard Dellheim, # 2 Exhibit December 1, 2006 Order, # 3 Exhibit March 16, 2007 Order, # 4 Text of Proposed Order)(Dellheim, Richard) (Entered: 06/22/2010)**
- 06/22/2010 **9** **MOTION to Intervene as Defendants by ALABAMASTATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., KENNETH DUKES, WILLIE GOLDSMITH, SR, MARY PAXTON-LEE, BOBBY PIERSON (Attachments: # 1 Memorandum in Support, # 2 Proposed Responsive Pleading, # 3 Text of Proposed Order) (znmw,) Modified spelling on 7/2/2010 (znmw,). (Entered: 06/23/2010)**

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- 06/24/2010 11 RESPONSE re 9 MOTION to Intervene, 6 MOTION to Intervene filed by ERIC H. HOLDER, JR. (Attachments: # 1 Exhibit Unpublished Orders)(Dellheim, Richard) (Entered: 06/24/2010)
- 06/25/2010 12 Memorandum in opposition to re 9 MOTION to Intervene, 6 MOTION to Intervene filed by SHELBY COUNTY, ALABAMA. (Attachments: # 1 Text of Proposed Order, # 2 Text of Proposed Order)(Consovoy, William) (Entered: 06/25/2010)
- 06/28/2010 13 ANSWER to 1 Complaint by ERIC H. HOLDER, JR.(Dellheim, Richard) (Entered: 06/28/2010)
- 07/01/2010 14 REPLY to opposition to motion re 5 MOTION for Summary Judgment filed by SHELBY COUNTY, ALABAMA. (Attachments: # 1 Text of Proposed Order)(Consovoy, William) (Entered: 07/01/2010)
- 07/01/2010 18 MOTION to Intervene as a Defendant by BOBBY LEE HARRIS (Attachments: # 1 Memorandum in Support, # 2 Exhibit A, # 3 Text of Proposed Order)(dr) (Entered: 07/06/2010)

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- 07/02/2010 15 **APPLICANTS FOR INTERVENTION'S PROPOSED ANSWER to 1 Complaint by ALABAMA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., KENNETH DUKES, WILLIE GOLDSMITH, SR, MARY PAXTON-LEE, BOBBY PIERSON.(Spitzer, Arthur) Modified spelling on 7/2/2010 (znmw,). (Entered: 07/02/2010)**
- 07/02/2010 16 **REPLY to opposition to motion re 9 MOTION to Intervene filed by ALABAMA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., KENNETH DUKES, WILLIE GOLDSMITH, SR, MARY PAXTON-LEE, BOBBY PIERSON. (Spitzer, Arthur) Modified spelling on 7/2/2010 (znmw,). (Entered: 07/02/2010)**
- 07/02/2010 17 **REPLY to opposition to motion re 6 MOTION to Intervene filed by EARL CUNNINGHAM, ALBERT JONES, HARRY JONES, ERNEST MONTGOMERY, ANTHONY VINES, WILLIAM WALKER. (Clarke, Kristen) (Entered: 07/02/2010)**

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- 07/13/2010 20 Memorandum in opposition to re 18 MOTION to Intervene filed by SHELBY COUNTY, ALABAMA. (Attachments: # 1 Text of Proposed Order)(Consovoy, William) (Entered: 07/13/2010)
- 07/13/2010 21 RESPONSE re 18 MOTION to Intervene filed by ERIC H. HOLDER, JR. (Attachments: # 1 Exhibit Unpublished orders)(Dellheim, Richard) (Entered: 07/13/2010)
- 07/21/2010 23 REPLY to opposition to motion re 18 MOTION to Intervene filed by BOBBY LEE HARRIS. (znmw,) (Entered: 07/21/2010)
- 07/28/2010 26 *Applicants for Intervention's [PROPOSED]* ANSWER to 1 Complaint by EARL CUNNINGHAM, ALBERT JONES, HARRY JONES, ERNEST MONTGOMERY, ANTHONY VINES, WILLIAM WALKER.(Clarke, Kristen) (Entered: 07/28/2010)
- 08/25/2010 29 ORDER granting 6 , 9 , 18 the pending motions to intervene. See text of Order for details. Signed by Judge John D. Bates on 8/25/2010. (lcjdb1) (Entered: 08/25/2010)

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- 08/25/2010 **30** **RESPONSE re 1 Complaint filed by EARL CUNNINGHAM, ALBERT JONES, HARRY JONES, ERNEST MONTGOMERY, ANTHONY VINES, WILLIAM WALKER. (dr) (Entered: 08/26/2010)**
- 08/25/2010 **31** **RESPONSE re 1 Complaint filed by ALABAMA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., KENNETH DUKES, WILLIE GOLDSMITH, SR, MARY PAXTON-LEE, BOBBY PIERSON. (dr) (Entered: 08/26/2010)**
- 08/25/2010 **32** **ANSWER to 1 Complaint by BOBBY LEE HARRIS.(dr) (Entered: 08/26/2010)**
- 09/01/2010 **MINUTE ORDER: On the Court's own motion, and upon consideration of the entire record herein, it is hereby ORDERED that the Court will hold a status conference in this action on September 10, 2010, at 2:00 p.m. in Courtroom 8. Signed by Judge John D. Bates on 9/1/2010. (lcjdb1) (Entered: 09/01/2010)**
- 09/03/2010 **33** **RESPONSE TO ORDER OF THE COURT re 29 Order on Motion to Intervene,,, Set/Reset Deadlines,**

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Order, Set Hearings,, filed by ERIC H. HOLDER, JR. (McFarland, Ernest)
(Entered: 09/03/2010)

- 09/03/2010 34 **RESPONSE TO ORDER OF THE COURT re 29 Order on Motion to Intervene,,, Set/Reset Deadlines filed by ERIC H. HOLDER, JR. (McFarland, Ernest) (Entered: 09/03/2010)**
- 09/08/2010 36 **Memorandum in opposition to re 5 MOTION for Summary Judgment filed by ALABAMASTATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., EARL CUNNINGHAM, KENNETH DUKES, WILLIE GOLDSMITH, SR, BOBBY LEE HARRIS, ALBERT JONES, HARRY JONES, ERNEST MONTGOMERY, MARY PAXTON-LEE, BOBBY PIERSON, ANTHONY VINES, WILLIAM WALKER. (Attachments: # 1 Declaration, # 2 Text of Proposed Order)(Clarke, Kristen) (Entered: 09/08/2010)**
- 09/10/2010 40 **REPLY to opposition to motion re 5 MOTION for Summary Judgment filed by SHELBY COUNTY, ALABAMA. (Attachments: # 1 Text of Proposed Order)(Consovoy, William) (Entered: 09/10/2010)**

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- 09/10/2010 Minute Entry: Status Conference held on 9/10/2010 before Judge John D. Bates. (Court Reporter Bryan Wayne) (tb,) (Entered: 09/13/2010)
- 09/16/2010 41 MEMORANDUM OPINION & ORDER denying 7 defendant and 36 defendant-intervenors' request for discovery. See text of Memorandum Opinion & Order for details. Signed by Judge John D. Bates on 9/16/2010. (lcjdb1) (Entered: 09/16/2010)
- 10/27/2010 45 TRANSCRIPT OF PROCEEDINGS before Judge John D. Bates held on 9/10/10; Page Numbers: 1 - 75. Date of Issuance:10/27/10. Court Reporter/Transcriber Bryan A. Wayne, Telephone number 202-354-3186, Court Reporter Email Address : bryanawayne@verizon.net.<P></P>For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter.<P>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with

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the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov.<P></P> Redaction Request due 11/17/2010. Redacted Transcript Deadline set for 11/29/2010. Release of Transcript Restriction set for 1/25/2011. (Wayne, Bryan) (Entered: 10/27/2010)

10/29/2010 46 ORDER setting deadlines and motions hearing. See text of Order for details. Signed by Judge John D. Bates on 10/29/10. (lcjdb1) (Entered: 10/29/2010)

10/29/2010 Set/Reset Deadlines/Hearings: The government's consolidated memorandum in opposition to plaintiff's motion for summary judgment and in support of its cross-motion for summary judgment is due by 11/15/2010. Defendant-intervenors' memoranda in opposition to plaintiff's motion for summary judgment and in support of their cross-motions for summary judgment are also due by 11/15/2010. Plaintiff's consolidated reply memorandum in support of its motion for

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summary judgment and in opposition to defendant's and defendant-intervenors' cross-motions for summary judgment is due by 12/13/2010. The government's reply memorandum in support of its cross-motion for summary judgment is due by 1/14/2011. The defendant-intervenors' reply memoranda in support of their cross-motions for summary judgment are also due by 1/14/2011. A motions hearing is set for 2/2/2011 at 09:30 AM in Courtroom 8 before Judge John D. Bates. (lcjdb1) (Entered: 10/29/2010)

- 11/15/2010 47 Cross MOTION for Summary Judgment by ALABAMA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., KENNETH DUKES, WILLIE GOLDSMITH, SR, MARY PAXTON-LEE, BOBBY PIERSON (Attachments: # 1 Memorandum in Support of Cross Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment, # 2 Text of Proposed Order)(McDonald, Laughlin) (Entered: 11/15/2010)
- 11/15/2010 48 RESPONSE to *Plaintiff's Statement of Facts* filed by ALABAMA

Appendix A

STATE CONFERENCE OF THE
NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF
COLORED PEOPLE, INC., EARL
CUNNINGHAM, KENNETH DUKES,
WILLIE GOLDSMITH, SR, BOBBY
LEE HARRIS, ERICH H. HOLDER, JR,
ALBERT JONES, HARRY JONES,
ERNEST MONTGOMERY, MARY
PAXTON-LEE, BOBBY PIERSON,
ANTHONY VINES, WILLIAM
WALKER. (Posner, Mark) (Entered:
11/15/2010)

- 11/15/2010 53 Memorandum in opposition to re 5
MOTION for Summary Judgment
filed by ERIC H. HOLDER, JR.
(Attachments: # 1 Statement of Facts,
2 Exhibit McCrary Declaration, # 3
Exhibit Berman Declaration, # 4 Text
of Proposed Order)(Dellheim, Richard)
(Entered: 11/15/2010)
- 11/15/2010 54 MOTION for Summary Judgment by
ERIC H. HOLDER, JR (Attachments:
1 Memorandum in Support, # 2
Statement of Facts, # 3 Exhibit McCrary
Declaration, # 4 Exhibit Berman
Declaration, # 5 Text of Proposed
Order)(Dellheim, Richard) (Entered:
11/15/2010)

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- 11/15/2010 55 **MOTION for Summary Judgment by BOBBY LEE HARRIS (Attachments: # 1 Proposed Order, # 2 Memorandum in Support)(Posner, Mark) (Entered: 11/15/2010)**
- 11/15/2010 56 **Memorandum in opposition to re 5 MOTION for Summary Judgment filed by BOBBY LEE HARRIS. (Posner, Mark) (Entered: 11/15/2010)**
- 11/15/2010 57 **L A R G E A D D I T I O N A L ATTACHMENT(S) *Joint Statement of Material Facts As to Which There is No Genuine Issue* by ALABAMA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., EARL CUNNINGHAM, KENNETH DUKES, WILLIE GOLDSMITH, SR, BOBBY LEE HARRIS, ALBERT JONES, HARRY JONES, ERNEST MONTGOMERY, MARY PAXTON-LEE, BOBBY PIERSON, ANTHONY VINES, WILLIAM WALKER 47 Cross MOTION for Summary Judgment filed by ALABAMA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., MARY PAXTON-LEE, KENNETH DUKES,**

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**WILLIE GOLDSMITH, SR., BOBBY
PIERSON, 55 MOTION for Summary
Judgment filed by BOBBY LEE
HARRIS. (Posner, Mark) (Entered:
11/15/2010)**

**11/15/2010 58 Cross MOTION for Summary Judgment
by EARL CUNNINGHAM, ALBERT
JONES, HARRY JONES, ERNEST
MONTGOMERY, ANTHONY VINES,
WILLIAM WALKER (Attachments:
1 Memorandum in Support, # 2
Declaration Declaration of Ernest
Montgomery, # 3 Text of Proposed
Order)(Clarke, Kristen) Modified on
1/18/2011 to enhance docket text (jf,).
(Entered: 11/15/2010)**

**11/15/2010 59 Memorandum in opposition to re 5
MOTION for Summary Judgment filed
by EARL CUNNINGHAM, ALBERT
JONES, HARRY JONES, ERNEST
MONTGOMERY, ANTHONY VINES,
WILLIAM WALKER. (Attachments:
1 Declaration Declaration of Ernest
Montgomery, # 2 Text of Proposed
Order)(Clarke, Kristen) (Entered:
11/16/2010)**

**11/17/2010 61 NOTICE of Lodging of Legislative
History Documents by ALABAMA
STATE CONFERENCE OF THE**

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NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., EARL CUNNINGHAM, KENNETH DUKES, WILLIE GOLDSMITH, SR, BOBBY LEE HARRIS, ERIC H. HOLDER, JR, ALBERT JONES, HARRY JONES, ERNEST MONTGOMERY, MARY PAXTON-LEE, BOBBY PIERSON, ANTHONY VINES, WILLIAM WALKER re 54 MOTION for Summary Judgment, 47 Cross MOTION for Summary Judgment, 58 Cross MOTION for Summary Judgment *and Opposition to Plaintiff's Summary Judgment Motion*, 55 MOTION for Summary Judgment (Posner, Mark) (Entered: 11/17/2010)

11/22/2010 63 MOTION for Leave to File Amicus by CONSTITUTIONAL ACCOUNTABILITY CENTER (Attachments: # 1 Proposed Amicus Brief, # 2 Text of Proposed Order)(rdj) (Entered: 11/22/2010)

11/22/2010 MINUTE ORDER: Upon consideration of 63 the unopposed motion of the Constitutional Accountability Center for leave to file an amicus curiae brief in support of defendant and defendant-intervenors, and the entire record

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herein, it is hereby ORDERED that the motion is GRANTED; and it is further ORDERED that the brief of the Constitutional Accountability Center as amicus curiae in support of defendants and defendant-intervenors is hereby accepted and deemed filed as of this date. SO ORDERED. Signed by Judge John D. Bates on 11/22/10. (lcjdb1) (Entered: 11/22/2010)

11/22/2010 64 A M I C U S B R I E F b y C O N S T I T U T I O N A L A C C O U N T A B I L I T Y C E N T E R. (jf,) (Entered: 11/23/2010)

12/13/2010 65 REPLY to opposition to motion re 5 MOTION for Summary Judgment filed by SHELBY COUNTY, ALABAMA. (Attachments: # 1 Statement of Facts, # 2 Text of Proposed Order)(Consovoy, William) (Entered: 12/13/2010)

12/13/2010 66 Memorandum in opposition to re 54 MOTION for Summary Judgment, 47 Cross MOTION for Summary Judgment, 58 Cross MOTION for Summary Judgment *and Opposition to Plaintiff's Summary Judgment Motion*, 55 MOTION for Summary Judgment filed by SHELBY COUNTY, ALABAMA. (Attachments: # 1 Statement of Facts,

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2 Text of Proposed Order)(Consovoy, William) (Entered: 12/13/2010)

- 01/14/2011 67 REPLY to opposition to motion re 54 MOTION for Summary Judgment filed by ERIC H. HOLDER, JR. (Attachments: # 1 Declaration Brinegar Declaration, # 2 Declaration Berman Supplemental Declaration)(Weinstein-Tull, Justin) (Entered: 01/14/2011)**
- 01/14/2011 69 REPLY to opposition to motion re 55 MOTION for Summary Judgment filed by BOBBY LEE HARRIS. (Posner, Mark) (Entered: 01/14/2011)**
- 01/19/2011 70 REPLY to opposition to motion re 47 Cross MOTION for Summary Judgment, 58 Cross MOTION for Summary Judgment *CONSOLIDATED REPLY MEMORANDUM OF POINTS AND AUTHORITIES OF CUNNINGHAM DEFENDANT-INTERVENORS AND PIERSON DEFENDANT-INTERVENORS IN SUPPORT OF CROSS-MOTION FOR SUMMARYJUDGMENT* filed by EARL CUNNINGHAM, ALBERT JONES, HARRY JONES, ERNEST MONTGOMERY, ANTHONY VINES, WILLIAM WALKER. (Clarke, Kristen) (Entered: 01/19/2011)**

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01/24/2011

MINUTE ORDER: On the Court's own motion, and upon consideration of the entire record herein, it is hereby ORDERED as follows. At the motions hearing on February 2, 2011 at 9:30 AM, the Court will hear argument only from plaintiff, defendant, and the three defendant-intervenors in this case. The Court will not hear argument from any amici who have filed briefs with the Court. The Court will hear first from plaintiff, then from defendant, then from defendant-intervenors, and then plaintiff's rebuttal, if any. Plaintiff shall have a total of one (1) hour to present its initial argument, and fifteen (15) minutes for rebuttal. Defendant shall have a total of forty-five (45) minutes, and the three defendant-intervenors shall have a total of thirty (30) minutes, which they may apportion among themselves as they see fit. SO ORDERED. Signed by Judge John D. Bates on 1/24/11. (lcjdb1) (Entered: 01/24/2011)

02/02/2011

Minute Entry: Motion Hearing held on 2/2/2011 re 47 Cross MOTION for Summary Judgment filed by ALABAMA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., MARY

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PAXTON-LEE, KENNETH DUKES, WILLIE GOLDSMITH, SR., BOBBY PIERSON, 58 Cross MOTION for Summary Judgment filed by ERNEST MONTGOMERY, HARRY JONES, ALBERT JONES, ANTHONY VINES, EARL CUNNINGHAM, WILLIAM WALKER, 54 MOTION for Summary Judgment filed by ERIC H. HOLDER, JR., 55 MOTION for Summary Judgment filed by BOBBY LEE HARRIS, 5 MOTION for Summary Judgment filed by SHELBY COUNTY, ALABAMA before Judge John D. Bates: Motions heard and taken under advisement. (Court Reporter Bryan Wayne.) (tb,) (Entered: 02/02/2011)

02/04/2011

MINUTE ORDER: On the Court's own motion, and upon consideration of the arguments of counsel at the February 2, 2011 hearing and the entire record herein, it is hereby ORDERED that the parties shall submit additional briefing by not later than February 16, 2011, which shall be limited to the following question: in considering the reauthorization of Section 5 of the Voting Rights Act in 2006, was it "rational in both practice and theory," *South Carolina v. Katzenbach*, 383 U.S. 301, 330 (1966), for Congress to

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preserve the existing coverage formula in Section 4(b) of the Act? In answering this question, the parties are strongly encouraged to point to specific instances in the legislative record that support their position. The parties are also encouraged to address each aspect of the question separately -- that is, to explain both why Section 4(b) is or is not rational "in practice" and why Section 4(b) is or is not rational "in theory." Plaintiff's memorandum addressing this question shall not exceed fifteen (15) pages in length, and defendant's memorandum addressing this question also shall not exceed fifteen (15) pages in length. Each defendant-intervenor may file its own memorandum addressing this question, which shall not exceed seven (7) pages in length; defendant-intervenors are, however, strongly encouraged to file a joint memorandum, not to exceed fifteen (15) pages in length, in order to avoid unnecessary duplication. SO ORDERED. Signed by Judge John D. Bates on 2/4/11.(lcjdb1) (Entered: 02/04/2011)

02/04/2011

Set/Reset Deadlines: The additional briefing required by the Court's 2/4/2011 Minute Order is due by 2/16/2011. (lcjdb1) (Entered: 02/04/2011)

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- 02/16/2011 **72** **MEMORANDUM re Order,,,,,, by BOBBY LEE HARRIS. (Posner, Mark) (Entered: 02/16/2011)**
- 02/16/2011 **73** **SUPPLEMENTAL MEMORANDUM to re 47 Cross MOTION for Summary Judgment, 58 Cross MOTION for Summary Judgment *CONSOLIDATED SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES OF CUNNINGHAM AND PIERSON DEFENDANT-INTERVENORS IN SUPPORT OF CROSS MOTIONS FOR SUMMARY JUDGMENT* filed by EARL CUNNINGHAM, ALBERT JONES, HARRY JONES, ERNEST MONTGOMERY, ANTHONY VINES, WILLIAM WALKER. (Clarke, Kristen) (Entered: 02/16/2011)**
- 02/16/2011 **74** **SUPPLEMENTAL MEMORANDUM re 65 REPLY to opposition to motion, and 66 Memorandum in opposition filed by SHELBY COUNTY, ALABAMA. (Consovoy, William) Modified on 2/17/2011 to create relationship and add link (dr). (Entered: 02/16/2011)**
- 02/16/2011 **75** **SUPPLEMENTAL MEMORANDUM re Order by ERIC H. HOLDER, JR. (Dellheim, Richard) Modified on 2/17/2011 to edit text (dr). (Entered: 02/16/2011)**

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02/17/2011 76 **TRANSCRIPT OF PROCEEDINGS** before Judge John D. Bates held on 2/2/11; Page Numbers: 1 - 144. Date of Issuance:2/17/11. Court Reporter/Transcriber Bryan A. Wayne, Telephone number 202-354-3186, Court Reporter Email Address : bryanawayne@verizon.net.<P></P>For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter.<P>**NOTICE RE REDACTION OF TRANSCRIPTS:** The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at ww.dcd.uscourts.gov.<P></P> Redaction Request due 3/10/2011. Redacted Transcript Deadline set for 3/20/2011. Release of Transcript Restriction set for 5/18/2011. (Wayne, Bryan) (Entered: 02/17/2011)

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- 06/15/2011 77 *NOTICE of Supplemental Information* by ERIC H. HOLDER, JR re 54 MOTION for Summary Judgment, 53 Memorandum in Opposition (Attachments: # 1 Exhibit)(McFarland, Ernest) (Entered: 06/15/2011)
- 06/16/2011 78 RESPONSE re 77 Notice (Other) filed by SHELBY COUNTY, ALABAMA. (Consovoy, William) (Entered: 06/16/2011)
- 07/15/2011 79 *NOTICE of Filing* by SHELBY COUNTY, ALABAMA (Attachments: # 1 Exhibit Letter)(Consovoy, William) (Entered: 07/15/2011)
- 09/09/2011 81 *NOTICE of Supplemental Information* by ERIC H. HOLDER, JR re 67 Reply to opposition to Motion, 54 MOTION for Summary Judgment, 53 Memorandum in Opposition, 77 Notice (Other) (Attachments: # 1 Exhibit Entered and Proposed Bailout Consent Decrees)(Dellheim, Richard) (Entered: 09/09/2011)
- 09/14/2011 82 NOTICE OF RELATED CASE by ERIC H. HOLDER, JR. Case related to Case No. 1:11-cv-01559-ABJ. (Dellheim, Richard) (Entered: 09/14/2011)

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- 09/21/2011 83 MEMORANDUM OPINION. Signed by Judge John D. Bates on 9/21/11. (lcjdb1) (Entered: 09/21/2011)
- 09/21/2011 84 ORDER granting 54 the Attorney General's motion for summary judgment and 47 , 55 , 58 the motions for summary judgment filed by defendant-intervenors and denying 5 Shelby County's motion for summary judgment. See text of Order and accompanying Memorandum Opinion for details. Signed by Judge John D. Bates on 9/21/11. (lcjdb1) (Entered: 09/21/2011)
- 09/23/2011 85 NOTICE OF APPEAL as to 83 Memorandum & Opinion, 84 Order, by SHELBY COUNTY, ALABAMA. Filing fee \$ 455, receipt number 0090-2675052. Fee Status: Fee Paid. Parties have been notified. (Consovoy, William) (Entered: 09/23/2011)
- 09/26/2011 86 Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid this date re 85 Notice of Appeal. (dr) (Entered: 09/26/2011)
- 09/27/2011 USCA Case Number 11-5256 for 85 Notice of Appeal filed by SHELBY COUNTY, ALABAMA. (kb,) (Entered: 09/27/2011)

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07/12/2012 **90** **MANDATE of USCA (certified copy)**
as to 85 Notice of Appeal to DC Circuit
Court filed by SHELBY COUNTY,
ALABAMA ; USCA Case Number 11-
5256. Ordered and Adjudged that the
judgment of the District Court appealed
from in this cause is hereby affirmed, in
accordance with the opinion of the court
filed herein this date. (sth,) (Entered:
07/12/2012)

**APPENDIX B — DECLARATION OF
DR. PEYTON MCCRARY WITH ATTACHMENTS,
FILED IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA,
NOVEMBER 15, 2010**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Civil Action No.

1:10-cv-00651-JDB

SHELBY COUNTY, ALABAMA,

Plaintiff,

v.

**ERIC H. HOLDER, Jr., in his official capacity as
Attorney General of the United States,**

Defendant

Declaration of Dr. Peyton McCrary

Pursuant to 28 U.S.C. § 1746, I, Peyton McCrary,
make the following declaration:

1. My name is Peyton McCrary. I am an historian
employed since August, 1990 by the Voting Section,
Civil Rights Division, of the Department of Justice.
My responsibilities include the planning, direction,

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coordination, and performance of historical research and statistical analysis in connection with litigation. On occasion I am asked to provide written or courtroom testimony on behalf of the United States.

2. I received B.A. and M.A. degrees from the University of Virginia and obtained my Ph.D. from Princeton University in 1972. My primary training was in the history of the United States, with a specialization in the history of the South during the 19th and 20th centuries. For 20 years I taught courses in my specialization at the University of Minnesota, Vanderbilt University, and the University of South Alabama. In 1998-99 I took leave from the Department of Justice to serve as the Eugene Lang Professor in the Department of Political Science, Swarthmore College. For the last four years I have co-taught a course on voting rights law as an adjunct professor at the George Washington University Law School.

3. I have published a prize-winning book, *Abraham Lincoln and Reconstruction: The Louisiana Experiment* (Princeton, N.J., Princeton University Press, 1978), six law review articles, six articles in refereed journals, and four chapters in refereed books. Over the last quarter century my published work has focused on the history of discriminatory election laws in the South, evidence concerning discriminatory intent or racially polarized voting presented in the context of voting rights litigation, and the impact of the Voting Rights Act in the South. Over the last three decades I have published numerous reviews of books in my areas of specialization and served as a scholarly referee for numerous journals and university presses. I continue to publish scholarly work on these

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topics while employed by the Department of Justice. A detailed record of my professional qualifications is set forth in the attached curriculum vitae (Attachment A), which I prepared and know to be accurate.

4. My publications most relevant to the issues discussed in this declaration include: *The End of Preclearance as We Knew It: How the Supreme Court Transformed Section 5 of the Voting Rights Act*, 11 Mich. J. Race & L. 275 (2006) (co-authored with Christopher Seaman and Richard Valelly), reprinted in *Voting Rights Act: Section 5 Preclearance and Standards: Hearings Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 96-181 (2005); *How the Voting Rights Act Works: Implementation of a Civil Rights Policy, 1965-2005*, 57 S.C. L. Rev. 785 (2006); *Bringing Equality to Power: How the Federal Courts Transformed the Electoral Structure of Southern Politics, 1960-1990*, 5 U. Pa. J. Const. L. 665 (2003); *Alabama*, in *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990*, at 38 (Chandler Davidson and Bernard Grofman eds., 1994) (co-authored with Jerome A. Gray, Edward Still, and Huey Perry); *South Carolina*, in *Quiet Revolution in the South*, supra, at 397 (co-authored with Orville Vernon Burton, Terence R. Finnegan, and James W. Loewen); *Racially Polarized Voting in the South: Quantitative Evidence from the Courtroom*, 14 Soc. Sci. Hist. 507 (1990); *Discriminatory Intent: The Continuing Relevance of "Purpose" Evidence in Vote-Dilution Lawsuits*, 28 How. L.J. 463 (1985); and *History in the Courts: The Significance of City of Mobile v. Bolden*, in *Minority Vote Dilution* 47 (Chandler Davidson ed., 1984).

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5. I have presented courtroom testimony as an expert witness in 15 voting rights cases, for the most part before joining the staff of the Civil Rights Division. In one instance, however, I testified on behalf of the United States as *amicus curiae*. In addition, I have presented sworn written testimony in seven cases, including three since my employment by the Department of Justice. I was retained as an expert in another 19 cases prior to my employment with the Civil Rights Division that settled before trial; 14 of these were Section 2 lawsuits. I was retained in two other Section 2 cases that settled after a trial court granted a preliminary injunction. In these cases my testimony has often dealt with legislative intent in adopting or maintaining at-large elections, numbered place or majority vote requirements, and methods of appointing local governing bodies, as well as with the history of racial discrimination in regard to voting. I have not testified in cases during the past four years.

6. The cases in which I testified that are most relevant to this declaration include: *Dillard v. Crenshaw County*, 640 F. Supp. 1347 (M.D. Ala. 1986); *Harris v. Graddick*, 593 F. Supp. 128 (M.D. Ala. 1984); *Brown v. Board of School Commissioners of Mobile County*, 542 F. Supp. 1078 (S.D. Ala. 1982), *aff'd*, 706 F.2d 1103 (11th Cir. 1983); and *Bolden v. City of Mobile*, 542 F. Supp. 1050 (S.D. Ala. 1982). In each of these cases brought under Section 2 of the Voting Rights Act I testified as an expert witness for the plaintiffs. The trial court decided the two *Mobile* cases before the 1982 revision of Section 2 of the Voting Rights Act and thus under the intent standard applied in constitutional challenges after *City of Mobile v. Bolden*, 446 U.S. 55 (1980).

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7. I have been asked by attorneys for the Department of Justice: 1) to describe some basic characteristics of Shelby County, Alabama, and 2) to investigate factual evidence relevant to the allegations by Shelby County as to the coverage formula for Section 5 of the Voting Rights Act. In my investigation I have drawn on my familiarity with the record assembled by House and Senate committees during the hearings preceding passage of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577, which I first examined when assisting attorneys for the United States in *Northwest Austin Municipal Utility District Number One v. Mukasey*, 573 F. Supp. 2d 221 (D.D.C. 2008), *vacated sub. nom. Northwest Austin Municipal Utility District Number One v. Holder*, 129 S. Ct. 2504 (2009).

Shelby County: Background

8. Shelby County is located south of Alabama's largest county, Jefferson County, and the State's largest municipality, the City of Birmingham, in the northern part of the state. A small portion of the state's largest municipality, Birmingham, is located within Shelby County and the county is included, in part, within the Birmingham Standard Metropolitan Statistical Area. There are also numerous towns and small cities within the county that have existed as separate municipalities for many years.

9. According to the 2000 Census, Shelby County had a total population of 143,293, including 126,951 whites (88.6%), 10,570 African Americans (7.4%), 2,910 Hispanics

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(2.0%), and 1,465 Asians (1.0%). U.S. Census Bureau, PL 94-171 (2000), Shelby County, Alabama.

10. According to the 2006-2008 estimates provided by the Census American Community Survey ("ACS"), Shelby County's total population was 183,014, of which 153,649 were white (84.0%), 17,621 were African American (9.6%), 6,674 were Hispanic (3.6%), and 2,894 were Asian (1.6%). U.S. Census Bureau, American Community Survey (ACS) 2006-2008 (3-year estimates), Shelby County, Alabama.

11. Comparing the 2006-2008 estimates provided by the American Community Survey with 2000 Census results, the total population of Shelby County has increased significantly from 2000 to 2008, from 143,293 to 183,014, an increase of 39,721 (27.7%) from its 2000 population.

12. According to the 2000 Census, Shelby County had within its borders the following municipalities: 1) Alabaster (city); 2) Birmingham (city, part); 3) Calera (city, part); 4) Chelsea (town); 5) Childersburg (town, part), 6) Columbiana (city); 7) Harpersville (town); 8) Helena (city, part); 9) Hoover (city, part); 10) Indian Springs Village (town); 11) Leeds (city, part); 12) Montevallo (city); 13) Pelham (city); 14) Vestavia Hills (city, part); 15) Vincent (town, part); 16) Wilsonville (town); and 17) Wilton (town). U. S. Census Bureau, American Fact Finder, Alabama, GCT-Pl. Race and Hispanic or Latino: 2000. In 2001 the municipality of Westover was incorporated.

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13. Shelby County and six of its municipalities, including the City of Calera, were among the defendants in the complex *Dillard* litigation, and each agreed to alter its at-large election system in favor of an election plan fair to minority voters. See, e.g., *Dillard v. Crenshaw County*, 748 F. Supp. 819 (M.D. Ala. 1990); *Dillard v. Town of Calera*, No. 2:87cv1167, 2007 WL 1607656 (M.D. Ala. May 9, 2007); *Dillard v. Town of Columbiana*, No. 2:87cv1189 (M.D. Ala.); *Dillard v. Town of Harpersville*, No. 2:87cv1228 (M.D. Ala.); *Dillard v. Town of Vincent*, No. 2:87cv1305 (M.D. Ala.); *Dillard v. Town of Wilsonville*, No. 2:87cv1315 (M.D. Ala.); *Dillard v. Town of Wilton*, No. 2:87cv1316 (M.D. Ala.).

**Settlements in Section 2 Litigation,
Covered vs. Non-covered Jurisdictions**

14. I have examined the evidence in two studies considered by Congress when it reauthorized Section 5 of the Voting Rights Act in 2006: (1) Ellen Katz, et. al., *Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982* (2005), reprinted in *To Examine Impact and Effectiveness of the Voting Rights Act: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 16, 964-1124 (2005) [hereinafter *Documenting Discrimination in Voting*]; and (2) Nat'l Comm'n on the Voting Rights Act, *Protecting Minority Voters: The Voting Rights Act at Work, 1982-2005* (2006), reprinted in *Voting Rights Act: Evidence of Continuing Need: Hearing Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary*, 109th Cong. 104-289

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(2006) [hereinafter *Protecting Minority Voters*].¹ The study by Professor Katz and law students working under her direction at the University of Michigan assembled data regarding all reported decisions in Section 2 litigation from 1982 to 2005. Among other evidence provided in its report, the staff of the National Commission gathered data regarding Section 2 litigation other than in reported decisions. The Commission's research utilized docket information contained on Lexis and the federal courts' Public Access to Court Electronic Records ("PACER") system; cases cited in the tables of *Quiet Revolution in the South*, *supra*; data supplied from the files of voting rights attorneys; and a search of the Department of Justice's Submission Tracking and Processing System ("STAPS")

1. In its analysis the National Commission report utilized a version of the Michigan study directed by Professor Katz – known as the Voting Rights Initiative (VRI) – available on the VRI website as of Jan. 16, 2006. Thus the numbers in *Protecting Minority Voters*, *supra*, at 251 tbl. 5, drawn from the Michigan study, differ slightly from the numbers on the record before Congress. In my analysis I have relied on the numbers from the Michigan study on the record before Congress and the numbers calculated by the National Commission staff. *Id.* Because I use the number of reported decisions favorable to minority voters in covered jurisdictions reported to the House (64) instead of the 66 such favorable outcomes identified in *Protecting Minority Voters*, at 251 tbl. 5, my total for reported decisions and court-ordered settlements is 651, rather than the 653 used by the National Commission. The slight differences in the numbers reported in different versions of the Michigan study do not affect the conclusions to be drawn from the data. A finalized set of numbers, which I believe are the most accurate, appeared in the version of the study published at 39 U. Mich. J.L. Reform 643 (2006).

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database, which records every Section 5 submission involving a change in the method of election since 1980. *See Protecting Minority Voters, supra*, at 240 n.280.

15. The Michigan study of reported decisions permits a detailed comparison of the enforcement of Section 2 in jurisdictions covered by Section 5 and enforcement in the rest of the country. Thus it provides useful evidence regarding the degree to which the Section 5 coverage formula captures jurisdictions in which racial discrimination in voting is most serious. On the other hand, as the Michigan study points out, many Section 2 cases have been settled by the parties to the advantage of minority voters in court-entered settlement agreements that are not reported by the courts. Professor Katz and her colleagues gathered lists of settled cases from various voting rights attorneys that suggested that the total volume of Section 2 litigation was at least four times as great as reflected in reported decisions. *See Documenting Discrimination in Voting, supra*, at 974.

16. The National Commission staff sought to collect data regarding the large volume of “all Section 2 claims – reported and unreported – resolved in a manner favorable to minority voters since 1982.” *Protecting Minority Voters, supra*, at 205. Their search was, however, restricted to jurisdictions covered by Section 5 (excluding one covered state, Alaska). *See id.* The Commission staff recognized that this list of unreported settlements was incomplete but offered it as a “best effort” at a comprehensive accounting. *Id.*

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17. A more comprehensive picture of the total volume of successful enforcement of Section 2 would include a similar list of settlements since 1982 for all jurisdictions *not* covered by Section 5. In order to obtain a more comprehensive assessment, I undertook a systematic search for Section 2 settlements in non-covered jurisdictions, utilizing the following methodology: I began with a list of all lawsuits catalogued in PACER as concerning “Civil Rights: Voting” (Code No. 441). I used LexisNexis CourtLink to search by docket number for all cases in non-covered jurisdictions. Four staff members working under my direction reviewed docket sheets to screen for possible Section 2 lawsuits and to print them for my review. After my initial review, two staff attorneys examined additional information from PACER about particular lawsuits suspected of being Section 2 settlements. In my final review, I did not include any case for which the docket sheet or case documents electronically linked to the dockets failed to provide some evidence that the case was resolved under Section 2 of the Voting Rights Act, whether by reference to the federal code section or by reference to “voting rights issues” or similar language. I also required some reference to settlement of the case, whether by consent decree, consent judgment, consent order, or a simple reference to “settlement.”

18. In addition, I used certain publicly available documents to supplement information from the electronic docket sheets. Laughlin McDonald & Daniel Levitas, *Vote: The Case for Extending and Amending the Voting Rights Act* (2006), reprinted in *Voting Rights Act: Evidence of Continuing Need: Hearing Before the Subcomm. on the*

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Constitution of the S. Comm. on the Judiciary, 109th Cong. 378-1269 (2006), provides detailed information about the outcome of Section 2 cases brought by the American Civil Liberties Union. The Voting Section of the Civil Rights Division of the Department of Justice maintains a routinely updated list of voting rights cases brought by it from 1976 to the present. Similar lists were made part of the record before Congress when the Voting Rights Act was amended in 1970, 1975, and 1982.²

19. My goal was to identify all Section 2 settlements in non-covered jurisdictions. I recognize, however, that because of the limitations of PACER and CourtLink – which did not begin receiving documents from district courts until the late 1980s – my list of Section 2 settlements may be under-inclusive. The Michigan study documents that reported decisions in Section 2 cases were most numerous in the first decade following the creation of the Section 2 results test in 1982. *Documenting Discrimination in Voting, supra*, at 975. The studies of Section 5 covered jurisdictions in *Quiet Revolution in the South* indicate that Section 2 lawsuits in Southern states generated numerous orders and settlements during the 1980s requiring the adoption of single-member districts or cumulative or limited voting plans. Some docket sheets are available in the PACER database beginning in 1985, but not consistently until the early 1990s. Until the last

2. I drew on the personal knowledge of Department of Justice attorneys in determining that two New Mexico cases, *United States v. Chaves County* and *United States v. Roswell Indep. Sch. District*, were settled by changing the method of election in the defendant jurisdictions.

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decade, moreover, few docket sheets included links to complaints or consent decrees, either in CourtLink or in PACER. The under-inclusiveness of CourtLink and PACER also necessarily affects the study of Section 2 settlements in covered jurisdictions conducted by the National Commission staff. *Protecting Minority Voters, supra*, at 204-08, 239-40, and 251 tbl. 5.

20. I can think of no plausible reason why district courts in covered jurisdictions, mostly in the South, would have been *more likely* to send information about voting cases to PACER than district courts in the rest of the country. Counting each jurisdiction equally and rounding to the nearest year, the average jurisdiction covered by Section 5 began reporting to PACER in 1992. The average non-covered jurisdiction began reporting in 1991. The average partially covered jurisdiction began reporting in 1989. Thus, to the extent that dates at which reporting began reflect the availability of information in PACER, non-covered jurisdictions should be over-represented, if anything.

21. I found a total of 99 Section 2 settlements in non-covered jurisdictions. Twenty-four of these cases were in Arkansas alone; thirteen were in California; eleven were in the non-covered counties of Florida; thirteen in the non-covered counties of North Carolina; and the rest scattered around the country. Evidence concerning 61 of the 99 settlements I found in non-covered jurisdictions (62%) was on the record considered by Congress in adopting the 2006 Reauthorization Act. *Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose:*

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Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 109th Cong. 2835-57 (2005), 2835-39; *Voting Rights Act: Evidence of Continuing Need: Hearing Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary*, 109th Cong. 321-22, 487-91, 500-02, 923-24, 953-54, 1150, 1171-73, 1200-03, 1246, 1252, 1484-85, 1491-92, 1763, 1773-74, 1779, 1782-89, 1794-95, 1875, 1889, 1986, 1999-2000, 4014-15, 4026-35, 4058-59, 4064, 4067-68, 4072-73, 4080-82, 4086, 4099, 4118-21, 4127, 4129, 4133-34, 4138, 4313-25, 4348, 4359-60, 4373, 4384, 4391-92, 4403-04, 4425, 4438, 4451-56, 4462, 4479, 4505-06, 4512-14, 4552, 4564-81, 4583, 4594, 4726, 4731-34, 4747, 5536-5544 (2006). See Attachment B to this declaration.

22. The 99 settlements in non-covered jurisdictions contrasts with the 587 cases resolved favorably to minority voters in covered jurisdictions found in the National Commission report.³ Even if the under-inclusiveness of my research protocol led me to find only *half* of the Section 2 settlements in non-covered jurisdictions – a hypothetical 194 settlements – there would still be *393 more* settlements resolved favorably for minority voters in areas covered by the preclearance requirements of the Voting Rights Act than in the rest of the country. Based on my training and experience as a historian and 30 years of experience doing research for voting rights litigation, I am confident that the number of court-ordered settlements in non-covered jurisdictions is unlikely to be greater than twice the number I have identified here. Furthermore, jurisdictions

3. Calculated from the numbers in *Protecting Minority Voters*, *supra*, at 251 tbl. 5 (see footnote 1, *supra*).

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covered by Section 5 account for less than a quarter of the nation's population, a number that highlights the disparity in court-ordered settlements. *Id.* at 83.

23. I have compared the number of Section 2 settlements in non-covered jurisdictions with the consent decrees resulting from the court decision in *Dillard v. Crenshaw County*, 640 F. Supp. 1347 (M.D. Ala. 1986), where the trial court enjoined further use of at-large elections in nine Alabama counties, one of which was Shelby County. The court found, relying in part on my expert testimony, that the *Dillard* plaintiffs had shown a substantial likelihood of prevailing on the merits by producing evidence that the Alabama legislature "has engaged in a pattern and practice of using at-large systems as an instrument of race discrimination." *Crenshaw County*, 640 F. Supp. at 1361.

24. The *Dillard* plaintiffs subsequently amended their complaint to add municipalities and local school boards, so that the number of defendants eventually totaled 183. Of these defendants, 176 entered into interim consent decrees with the plaintiffs. The parties agreed to have the court deal with 165 of the defendants in separate lawsuits, with separate files and civil action numbers, with the remaining 18 jurisdictions treated as defendants in *Dillard v. Crenshaw County*. See *Dillard v. Baldwin County*, 686 F. Supp. 1459, 1461 (M.D. Ala. 1988). In short, the number of Section 2 settlements in the *Dillard* litigation alone was 1.8 times as great as the 99 settlements I have identified in non-covered jurisdictions.

*Appendix B**Conclusions*

25. Considering cases resolved not only by reported decisions but also by court-ordered settlements gives a more comprehensive picture of the scope of litigation enforcing Section 2 of the Voting Rights Act than simply looking at reported decisions in Westlaw or Lexis. Once the number of court-ordered settlements is added to the reported decisions, it becomes clear that the vast majority of racially discriminatory election practices ended by enforcement of Section 2 during the past quarter century has taken place in jurisdictions covered by Section 5 of the Act. The pattern is in fact quite stark.

26. The study of reported decisions by Ellen Katz and law students at the University of Michigan included in the House record identified 64 Section 2 cases in covered jurisdictions in which plaintiffs were successful. *Documenting Discrimination in Voting, supra*, at 974-75.⁴ The National Commission report found 587 cases

4. While the version of the Michigan study before the House identified 64 Section 2 cases in covered jurisdictions in which minority plaintiffs were successful, and 50 cases in non-covered jurisdictions in which plaintiffs prevailed, the finalized, published version of the study concludes that there were 68 cases with successful outcomes for minority plaintiffs in covered jurisdictions and 55 such cases in non-covered jurisdictions (44.7% of the total). See 39 U. Mich. J.L. Reform 643, 656 (2006). The list of Section 2 cases identified in the published Michigan study is available at http://sitemaker.umich.edu/votingrights/final_report. In both the initial and finalized versions of the Michigan study, more than half of all Section 2 cases in which minority plaintiffs prevailed were in covered jurisdictions.

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which it characterized as resolved in a manner favorable to minority voters in covered jurisdictions where there were no reported decisions. *Protecting Minority Voters, supra*, tbl. 5.⁵ These cases, some of which were statewide in impact, affected voting practices in 825 counties, parishes, or independent cities covered by Section 5. *Id.*

27. Looking at jurisdictions not covered by Section 5, the University of Michigan study before the House found only 50 reported cases with outcomes that the authors characterized as favorable for minority voters. *Documenting Discrimination in Voting, supra*, at 974-75. Even though more than three-fourths of the nation's population lives in non-covered jurisdictions, *id.*, only 50 (44%) of the 114 reported decisions before Congress that were favorable for minority voters came from these non-covered jurisdictions. Looking at unreported cases, I found only 99 Section 2 settlements in non-covered jurisdictions, as compared with the 587 in areas covered by Section 5 identified in the National Commission report. *Protecting Minority Voters, supra*, tbl. 5. Evidence regarding 61 of the 99 Section 2 settlements was on the record before Congress. Adding the settlements in covered and non-covered jurisdictions gives a total of 686 successful outcomes in cases without reported decisions, of which 86% fall within jurisdictions covered by Section 5, as demonstrated in the following Table:

5. The National Commission identified 66 reported cases that it characterized as being resolved favorably for plaintiffs, rather than the 64 in the Michigan data on the record before Congress. As noted in Footnote 1, *supra*, the Commission relied on an interim dataset from the Michigan study. See *Protecting Minority Voters, supra*, tbl. 5.

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	Covered Jurisdictions	Non-Covered Jurisdictions	Total
Favorable Reported Decisions	64 (56%)	50 (44%)	114 (100%)
Court- Ordered Settlements	587 (86%)	99 (14%)	686 (100%)
Total	651 (81%)	149 (19%)	800 (100%)

28. Based on the record before Congress when it adopted the 2006 Reauthorization Act, 61 Section 2 cases settled favorably for minority voters in non-covered jurisdictions. *See* Paragraph 21, *supra*. According to the National Commission report provided to Congress in 2006, 587 Section 2 lawsuits resulted in favorable outcomes for minority voters in jurisdictions covered by Section 5. Thus the record before Congress shows that 91% of all Section 2 unreported cases settled favorably for minority voters were in covered jurisdictions.

29. Combining all successful outcomes in both reported and unreported cases - including those on the record before Congress in 2006 and those I have identified in the study reported here - shows that 81 percent of all successful outcomes in Section 2 cases occurred in covered jurisdictions. *See* Table in paragraph 28, above.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of November, 2010.

/s/ _____
Peyton McCrary

Appendix B

ATTACHMENT A

CURRICULUM VITAE: PEYTON McCrARY

Historian, U.S. Department of Justice, 1990-
Civil Rights Division, Voting Section
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Principal Functions: Research in connection with voting rights litigation; identifying consultants and expert witnesses to be used in cases; working with attorneys and experts to prepare for direct testimony and cross-examination; supervising the preparation of contracts and processing the reimbursement of consultants and expert witnesses; drafting presentation of factual evidence in memoranda, briefs, and proposed findings of fact; legislative history research.

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PERSONAL: Born, Danville, Virginia, 1943.

EDUCATION: University of Virginia:
B.A. (Honors), 1965
M.A., History, 1966

Appendix B

Princeton University:
Ph.D., History, 1972

FIELDS: Minority Voting Rights; Law and the
Political Process; U.S. History; History
of the South; Southern Politics; Civil War
and Reconstruction; American Political
Parties and Voting Behavior; Theory and
Methods of Historical Analysis

ACADEMIC APPOINTMENTS:

Adjunct Professor, George Washington University Law
School, Washington, D.C., 2006 -

Eugene Lang Professor [Visiting], Department of Political
Science, Swarthmore College, Swarthmore, Pennsylvania,
1998-1999.

Distinguished Scholar, Joint Center for Political and
Economic Studies, Washington, D.C., 1987-1988.

Associate Professor of History, 1978-82, Professor of
History, 1982-90, University of South Alabama, Mobile,
Alabama.

Assistant Professor of History, 1976-1978, Vanderbilt
University, Nashville, Tennessee

Instructor, Assistant Professor of History, 1969-1976,
University of Minnesota, Minneapolis, Minnesota

*Appendix B***BOOK:**

Abraham Lincoln and Reconstruction: The Louisiana Experiment (Princeton, N.J., Princeton University Press, 1978), 423 pages. Winner, Kemper Williams Prize, Louisiana Historical Association, 1979.

BOOK CHAPTERS:

"The Law of Preclearance: Enforcing Section 5," co-authored with Christopher Seaman and Richard Valelly, in David Epstein, et.al. (eds.), *The Future of the Voting Rights Act* (New York, Russell Sage Foundation, 2006), 20-37.

"Alabama," co-authored with Jerome A. Gray, Edward Still, and Huey Perry, and "South Carolina," co-authored with Orville Vernon Burton, Terence R. Finnegan, and James W. Loewen, in Chandler Davidson and Bernard Grofman (eds.), *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990* (Princeton, N.J., Princeton University Press, 1994), 38-66, 397-409. Winner, Richard Fenno Prize, American Political Science Association.

"History in the Courts: The Significance of *City of Mobile v. Bolden*," in Chandler Davidson (ed.), *Minority Vote Dilution* (Washington, D.C., Howard University Press, 1984), 47-65.

LAW REVIEW ARTICLES:

"How the Voting Rights Act Works: Implementation of a Civil Rights Policy, 1965-2005," *South Carolina Law Review*, 57 (Summer 2006), 785-825.

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"The End of Preclearance as We Knew It: How the Supreme Court Transformed Section 5 of the Voting Rights Act," co-authored with Christopher Seaman and Richard Valelly, *Michigan Journal of Race & Law*, 11 (Spring 2006), 275-323. [An unpublished version was printed in *Voting Rights Act: Section 5 Preclearance and Standards: Hearings Before the Subcomm. On the Constitution, H. Comm. On the Judiciary*, 109th Cong., 96-181 (2005)(Serial No. 109-69).]

"Bringing Equality to Power: How the Federal Courts Transformed the Electoral Structure of Southern Politics, 1960-1990," *University of Pennsylvania Journal of Constitutional Law*, 5 (May 2003), 665-708.

"Yes, But What Have They Done to Black People Lately? The Role of Historical Evidence in the Virginia School Board Case," *Chicago-Kent Law Review*, 70 (No. 3, 1994), 1275-1305.

"Keeping the Courts Honest: The Role of Historians as Expert Witnesses in Southern Voting Rights Cases," co-authored with J. Gerald Hebert, *Southern University Law Review*, 16 (Spring 1989), 101-28.

"Discriminatory Intent: The Continuing Relevance of 'Purpose' Evidence in Vote-Dilution Lawsuits," *Howard Law Journal*, 28 (No. 2, 1985), 463-93.

JOURNAL ARTICLES:

"The Struggle for Minority Representation in Florida, 1960-1990," *Florida Historical Quarterly*, 86 (Summer 2007), 93-111.

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"Race and Reapportionment, 1962: The Case of Georgia Senate Redistricting," co-authored with Steven F. Lawson, *Journal of Policy History*, 12 (No.3, 2000), 293-320.

"The Dynamics of Minority Vote Dilution: The Case of Augusta, Georgia, 1946-1986," *Journal of Urban History*, 25 (Jan. 1999), 199-225.

"Racially Polarized Voting in the South: Quantitative Evidence from the Courtroom," *Social Science History*, 14 (Winter 1990), 507-31.

"The Party of Revolution: Republican Ideas About Politics and Social Change, 1862-1867," *Civil War History*, 30 (December 1984), 330-50.

"Class and Party in the Secession Crisis: Voting Behavior in the Deep South, 1856-1861," co-authored with Clark Miller and Dale Baum, *Journal of Interdisciplinary History*, VIII (Winter 1978), 429-57.

REVIEW ESSAYS:

"Race and Misrepresentation: Review of Maurice T. Cunningham, *Maximization, Whatever the Cost: Race, Redistricting, and the Department of Justice*," H-Net, Feb. 2002. www.h-net.msu.edu/reviews/showrev.cgi?path=214111015008351.

"Review of David Lublin, *The Paradox of Representation: Racial Gerrymandering and Minority Interest in Congress*," H-Net, May 1998. www.h-net.msu.edu/reviews/showrev.cgi?path=23313895266679.

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"Without Fear and Without Research: Abigail Thernstrom on the Voting Rights Act," co-authored with Pamela S. Karlan, *Journal of Law and Politics*, IV (Spring 1988), 751-77.

"The Political Dynamics of Black Reconstruction," *Reviews in American History*, 12 (March 1984), 51-57.

ENCYCLOPEDIA ARTICLE:

"The Reconstruction Myth," in Charles Reagan Wilson and William Ferris (eds.), *Encyclopedia of Southern Culture* (Chapel Hill, University of North Carolina Press, 1989), 1120-21 [reprinted in Jonathan Birnbaum and Clarence Taylor (eds.), *Civil Rights Since 1787: A Reader on the Black Struggle* (New York, New York University Press, 2000), 150-53.]

BOOK REVIEWS: *American Historical Review*, *Journal of Interdisciplinary History*, *Journal of Southern History*, *Social Science History*, *American Review of Politics*.

COURTROOM TESTIMONY AS AN EXPERT WITNESS:

(United States as Amicus Curiae), *SCLC v. Evans*, M.D.Ala. (Montgomery), December 1991. [Challenge to the method of electing certain circuit judges in Alabama]

(Plaintiffs), *Vereen v. Ben Hill County*, M.D.Ga. (Macon), December 1989. [Challenge to the state law requiring appointment of county school boards by the local grand jury, as applied in more than a dozen counties]

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(Plaintiffs), *Hall v. Holder*, M.D.Ga. (Macon), December 1989. [Challenge to the sole commissioner form of government in Bleckley County, Georgia.]

(Plaintiffs), *Irby v. Fitzhugh*, E.D.Va. (Richmond), June 1988. [Challenge to the appointment of all school boards in the Commonwealth of Virginia]

(Plaintiffs), *Dillard v. Crenshaw County, et.al.*, M.D.Ala. (Montgomery), Preliminary Injunction Hearing, March 1986. [Challenge to the at-large election of public officials in more than 180 Alabama counties, municipalities, and school boards]

(Plaintiffs), *Whitfield v. Clinton*, E.D.Ark. (Helena), March 1988. [Challenge to the use of the statewide majority vote requirement in Phillips County, Arkansas]

(Plaintiffs), *Dent v. Culpepper*, M.D.Ga. (Macon), Preliminary Injunction Hearing, November 1987. [Challenge to the at-large election of the City Commission in Cordele, Georgia]

(Plaintiffs), *Jackson v. Edgefield County, School District*, D.S.C. (Columbia), April 1986. [Challenge to the at-large election of the Edgefield County School Board]

(Plaintiffs), *Harris v. Graddick*, M.D.Ala. (Montgomery), February 1985. [Challenge to the procedures by which election officials are selected and elections conducted in Alabama]

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(Plaintiffs), *Woods v. Florence*, N.D.Ala. (Birmingham), August 1984. [Challenge to the method of appointing the Jefferson County Personnel Board]

(Plaintiffs), *Collins v. City of Norfolk*, E.D.Va. (Norfolk), May 1984. [Challenge to the at-large election of the Norfolk City Council]

(United States), *County Council of Sumter County, S.C. v. U.S.*, D.D.C., February 1983. [Defense of Section 5 Objection to the at-large election of the Sumter County Council]

(United States), *U.S. v. Dallas County Commission*, S.D.Ala. (Selma), October 1981. [Challenge to the at-large election of the Dallas County Commission]

(Plaintiffs), *Bolden v. City of Mobile*, S.D.Ala. (Mobile), May 1981. [Challenge to the at-large election of the Mobile City Commission]

(Plaintiffs), *Brown v. Board of School Commissioners of Mobile County*, S.D.Ala. (Mobile), April 1981. [Challenge to the at-large election of the Mobile County School Board]

SWORN WRITTEN TESTIMONY AS AN EXPERT WITNESS:

(United States as Defendant-Intervenor) July 31, 1996, *Cook v. Marshall County, Mississippi, and United States*, C.A. No. 3:95 CV 155-D-A, N.D. Miss. [Defense of Marshall County's redistricting plan]

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(United States as Defendant-Intervenor) July 19, 1994, *Hays v. State of Louisiana*, C.A. No. 92-1522S, W.D. La. (Shreveport). [Defense of Louisiana's congressional redistricting plan]

(United States) March 25, 1991, *State of Georgia v. Thornburg* C.A. No. 90-2065, D.D.C. [Defense of Section 5 Objection to the method of electing certain superior court judges in Georgia]

(Plaintiffs) January 20, 1988, *Irby v. Fitzhugh*, C.A. No. 87-0633-R, E.D.Va. (Richmond). [Challenge to the appointment of all school boards in the Commonwealth of Virginia]

(United States) June 25, 1984, *U.S. v. Halifax County*, N.C., C.A. No. 83-88-CIV-8, E.D.N.C. (Wilson). [Challenge to the at-large election of the Halifax County Commission]

(Plaintiffs) April 22, 1983, *Wilson v. Powell*, C.A. No. 383-14, S.D.Ga. (Dublin). [Challenge to the appointment of the Johnson County School Board by the county grand jury]

(United States) September 28, 1982, *County Council of Sumter County, S.C. v. U.S.*, C.A. No. 82-0912, D.D.C. [Defense of Section 5 Objection to the at-large election of the Sumter County Council]

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CONGRESSIONAL TESTIMONY:

“Written Testimony of Dr. Peyton McCrary,” in *Extension of the Voting Rights Act: Hearings Before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, U.S. House of Representatives, 97th Cong., 1st Sess., Serial No. 24* (3 vols., Washington, D.C., G.P.O., 1982), III, 2749-76.

“Testimony Before the Subcommittee of National Parks and Public Lands, Committee on the Interior, U.S. House of Representatives, June 14, 1988.

UNPUBLISHED CONFERENCE PAPERS:

“From *Gomillion v. Lightfoot* to *City of Pleasant Grove v. United States*: Annexations, De-annexations, and the Voting Rights Act.” Constitution Day Conference, San Francisco State University, September 2010.

“Two Kinds of Vote Dilution: From *Baker v. Carr* to *White v. Regester*.” Organization of American Historians, April 2010.

“How the Voting Rights Act Works: Implementation of a Civil Rights Policy, 1965-2005,” University of South Carolina School of Law, October 2005; [revised version, Southern Historical Association, November 2005].

“Bringing Equality to Power: Federal Courts and the Transformation of Southern Electoral Politics, 1960-2000.” Organization of American Historians, April 2002.

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"Why the Voting Rights Act Worked: A Judicial Model of Policy Implementation." Social Science History Association, October 1997; [revised version, Association of Public Policy Analysis and Management, November 1997].

"Yes, But What Have They Done to Black People Lately? The Role of Historical Evidence in the Virginia School Board Case." Southern Historical Association, November 1992.

"The Impact of the Voting Rights Act in Alabama," co-authored with Jerome Gray, Edward Still, and Huey Perry. American Political Science Association, 1989 [revised version presented at a Conference on the Impact of the Voting Rights Act, Rice University, Houston, Texas, May 1990].

"Taking History to Court: The Issue of Discriminatory Intent in Southern Voting Rights Cases." Joint Center for Political and Economic Studies, Washington, D.C., June 13, 1988.

"Keeping the Courts Honest: Expert Witnesses in Voting Rights and School Desegregation Cases," co-authored with J. Gerald Hebert. Southern Historical Association, November 1986.

"Discriminatory Intent: The Continuing Relevance of 'Purpose' Evidence in Vote-Dilution Lawsuits." Conference on Voting Rights Law, Howard University School of Law, Washington, D.C., January 1985.

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"The Subtle Gerrymander: Discriminatory Purposes of At-large Elections in the South, 1865-1982." Organization of American Historians, April 1983.

"The Party of Revolution: Republican Ideas About Politics and Social Change, 1861-1868." Southern Historical Association, November 1980.

"After the Revolution: American Reconstruction in Comparative Perspective." American Historical Association, December 1979.

"The Civil War Party System, 1854-1876: Toward a New Behavioral Synthesis?" Southern Historical Association, November 1976.

CHAIRPERSON, PANELIST, OR COMMENTATOR:

Alabama Association of Historians, 1983.

Alabama Department of Archives and History, 1988.

American Political Science Association, 1987, 2003.

Brookings Institution, 1990.

National Association of Secretaries of State, 1983.

Organization of American Historians, 1979, 1995.

Social Science History Association, 1981, 1987, 1996, 1997, 1999.

Southern Historical Association, 1973, 1985.

University of Alabama, 1983.

University of Utah, 2007.

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ACADEMIC REFEREE:

Book-length manuscripts: Princeton University Press, University of North Carolina Press, University of Tennessee Press, University of Alabama Press, Louisiana State University Press, University of Georgia Press.

Article-length manuscripts: Journal of American History, American Historical Review, Sociological Spectrum, Gulf Coast Historical Review, Social Science History.

CONSULTANT:

Test Design: College Board Achievement Test, American History; Educational Testing Service, Princeton, N.J., 1979-1983

Archival: Re-organization of Section 5 Objection Files, Civil Rights Division/Voting Section, U.S. Department of Justice, Washington, D.C., January-July, 1989.

Litigation Research: Civil Rights Division/Voting Section, U.S. Department of Justice, Washington, D.C., August 1989 to August 1990.

FELLOWSHIPS AND GRANTS:

John D. and Catherine T. MacArthur Foundation, 1987-1988: Distinguished Scholar, Joint Center for Political and Economic Studies, Washington, D.C.

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American Philosophical Society, 1983: Research Travel Grant.

Rockefeller Foundation, 1982-1983: Research Fellowship.

Carnegie Corporation of New York, 1982-1983: Research Fellowship.

National Endowment for the Humanities, 1980: Summer Research Stipend.

University of South Alabama, 1978-1987: Faculty Research Grants; Research Council Grant.

Vanderbilt University, 1976-1978: Manuscript Preparation Grant.

University of Minnesota, 1969-1976: Faculty Research Grants.

Princeton University, 1966-69: University Fellow; Herbert Osgood Fellow; NDEA Fellow.

University of Virginia, 1961-1966: Echols Scholar; Du Pont Scholar; Ford Foundation Fellow.

Appendix B

ATTACHMENT B

Attachment B: Section 2 Cases Settled by Consent Decrees in Non-Covered Jurisdictions

The following 99 cases are confirmed Section Two settlements in non-covered jurisdictions.

The 61 settlements in Section 2 cases listed in bold are identified in the record of congressional hearings. Citations are to the following hearing volumes: *Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 2835-57 (2005) [hereinafter *History, Scope, and Purpose*]; *Voting Rights Act: Evidence of Continuing Need: Hearing Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary*, 109th Cong. 104-289 (2006) [hereinafter *Evidence of Continuing Need*].

Settlements in cases that had minority language claims under Section 203 or 4(e) as well as Section 2 claims are listed in italics. Because these cases are identified in the record of congressional hearings, they are also listed in bold.

Where a civil action number is unknown, the date of filing is listed in brackets.

Arkansas (24)

United States v. Mississippi County, E.D. Ark. [10-15-1986]

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Townsend, et al v. Watson, 1:89cv1111 (W.D. Ark. 1998)

James v. Snowden, 2:89cv54 (E.D. Ark. 1990)

Hunt v. Arkansas, 5:89cv406 (E.D. Ark. 1991)

Baxter v. Smith, 5:89cv416 (E.D. Ark. 1990)

Blunt v. Knight, 5:89cv417 (E.D. Ark. 1991)

U.S. v. City of Magnolia, W.D. Ark. [4-26-1990] [*History, Scope, and Purpose*, 2837]

Penn v. Hazen Education Bd., 4:90cv793 (E.D. Ark. 1991)

Teal v. Womack, 5:90cv364 (E.D. Ark. 1990)

Hill v. Rochelle, 5:90cv602 (E.D. Ark. 1992)

Bell, et al v. Galloway, 6:90cv6089 (W.D. Ark. 1991)

Jones v. City of Camden, 1:91cv1110 (W.D. Ark. 1992)

Govan v. Huttig School District, 1:91cv1153 (W.D. Ark. 1993)

Reed v. Coles, 2:91cv12 (E.D. Ark. 1991)

Henderson v. Pickens, 4:91cv4025 (W.D. Ark. 1992)

Brown v. Grumbles, 5:91cv628 (E.D. Ark. 1993)

Childs v. Diemer, 5:91cv646 (E.D. Ark. 1993)

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Jones v. City of Lonoke, 4:92cv539 (E.D. Ark. 1992)

Kemp, et al v. Hope Ar, City Of, et al., 4:92cv4124 (W.D. Ark. 1993)

Montgomery v. Mcgehee School District, 5:92cv18 (E.D. Ark. 1993)

Montgomery v. City of Mcgehee, 5:92cv25 (E.D. Ark. 1992)

Norman v. Dumas School District, 5:92cv345 (E.D. Ark. 1993)

Gordon v. City of Hot Springs, 6:93cv6070 (W.D. Ark. 1993)

Cox v. Donaldson, 5:02cv319 (E.D. Ark. 2003)

California (13)

United States v. City of Los Angeles, C.D. Cal. [11-26-1985] [*History, Scope, and Purpose*, 2836]

Reyes v. Alta Hosp. Dist., No. 1:90cv620 (E.D. Cal.)

Reyes v. City of Dinuba, No. 1:91cv168 (E.D. Cal.)

Espino v. Cutler-Orosi Unified Sch. Dist., No. 1:91cv169 (E.D. Cal.)

Reyes v. Dinuba Elementary Sch. Dist., No. 1:91cv170 (E.D. Cal.)

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Elizondo v. Dinuba Joint Union High School, No. 1:91cv171 (E.D. Cal.)

Martinez v. City of Bakersfield, No. 1:91cv590 (E.D. Cal.)

Mendoza v. Salinas Valley Mem. Hosp., No. 5:92cv20462 (E.D. Cal.)

United States v. Alameda County, N.D. Cal. [4-13-1995] – Also a Sec. 203 Case [*History, Scope, and Purpose*, 2838]

Garcia v. City of Los Angeles, No. 2:96cv7661 (C.D. Cal.)

United States v. City of Santa Paula, No. 2:00cv3691 (C.D. Cal.) [*History, Scope, and Purpose*, 2838]

United States v. Upper San Gabriel Valley Municipal Water District, No. 2:00cv7903 (C.D. Cal.) [*History, Scope, and Purpose*, 2838]

Common Cause v. Jones, No. 2:01cv3470 (C.D. Cal.)

Colorado (1)

Martinez v. Romer, No. 1:91cv1972 (D. Colo.)

Connecticut (1)

Bridgeport Coalition for Fair Representation v. City of Bridgeport, No. 3:93cv1476 (D.Conn.). [*Evidence of Continuing Need*, 4064, 4067-68]

*Appendix B***Florida (11)**

Williams v. City of Leesburg, No. 83-66-CIV-OC-14 (M.D. Fla. 1985). [*Evidence of Continuing Need*, 1484]

Madison Co. Chapter NAACP v. Madison County, No. TCA-84-7234 (M.D. Fla. 1986)[*Evidence of Continuing Need*, 1484]

Potter v. Washington County, 653 F. Supp. 121 (N.D. Fla. 1986) [*Evidence of Continuing Need*, 1484, 4565]

Bradford Co. Branch NAACP v. Bradford Co. School Board, No. 86-4-CIV-J-12 M.D.Fla.1986). [*Evidence of Continuing Need*, 1484-85]

Bradford Co. Branch NAACP v. Bradford Co. Commission, No. 86-4-CIV-J-14 (M.D.Fla.1986). [*Evidence of Continuing Need*, 1484-85]

Tallahassee Branch NAACP v. Leon County, 827 F.2d 1436 (11th Cir. 1987). [*Evidence of Continuing Need*, 1484, 4566]

Coleman v. Fort Pierce City Council, No. 2:92cv14157 (S.D. Fla.) [*Evidence of Continuing Need*, 487-91]

Anderson v. West Palm Beach City, No. 9:94cv8135 (S.D. Fla.) [*Evidence of Continuing Need*, 500-02]

George v. City of Cocoa, No. 6:93cv257 (S.D. Fla.). [*Evidence of Continuing Need*, 477-81, 4575]

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NAACP v. Harris, No. 1:01cv120 (S.D. Fla.) [*Evidence of Continuing Need*, 1200-03, 1491-92]

United States v. Osceola County, Fla., M.D. Fla. [6-28-2002] – Also a Sec. 203 Case [*Evidence of Continuing Need*, 4581; *History, Scope, and Purpose*, 2839]

Illinois (2)

Banks v. City of Peoria, No. 2:87cv2371 (C.D. Ill.)

Black v. McGuffage, No. 1:01cv208 (N.D. Ill.). [*Evidence of Continuing Need*, 4462, 4348]

Indiana (3)

Dickinson v. Indiana State Election Bd., 817 F. Supp. 737 (S.D. Ind. 1992). [*Evidence of Continuing Need*, 4359-60]

Anderson v. Morgan, No. 1:94cv1447 (S.D. Ind.)

Hines v. Marion Co. Election Bd., 166 F.R.D. 402 (S.D. Ind. 1995). [*Evidence of Continuing Need*, 4359]

Maryland (3)

United States v. City of Cambridge, D. Md. [12-5-1984]. [*Evidence of Continuing Need*, 5540; *History, Scope, and Purpose*, 2836]

United States v. Dorchester County, D. Md. [12-5-1984] [*History, Scope, and Purpose*, 2836]

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Conaway v. Maryland, No. 1:90cv610 (D. Md.)

Massachusetts (2)

United States v. City of Lawrence, D. Mass. [11-5-1998]
– Also Sec. 203 [*Evidence of Continuing Need*, 4072-73, 4080; *History, Scope, and Purpose*, 2838]

United States v. City of Boston, No. 05-11598 (D. Mass. 2005) – Also Sec. 203 [*History, Scope, and Purpose*, 2839]

Michigan (1)

United States v. City of Hamtramck, No. 2:00-73541 (E.D. Mich.) [*Evidence of Continuing Need*, 321-22, 4373; *History, Scope, and Purpose*, 2838]

Missouri (1)

Rojas v. Moriarty, 1994 Lexis 4033 (W.D. Mo. 1994) [*Evidence of Continuing Need*, 4384]

Montana (3)

Matt v. Ronan School District, No. 99-94 (D. Mont.) [*Evidence of Continuing Need*, 1150, 1252]

Alden v. Bd. of County Comm'rs of Rosebud County, 1:99cv148 (D. Mont.) [*Evidence of Continuing Need*, 1150, 1246]

United States v. Roosevelt County, No. 1:00cv50 (D. Mont.) [*History, Scope, and Purpose*, 2838]

*Appendix B***New Jersey (1)**

United States v. Passaic City and Passaic County, D.N.J. [6-2-1999] – Also Sec. 203, 208 [*Evidence of Continuing Need*, 4133-34, 4138, *History, Scope, and Purpose*, 2838]

New Mexico (7)

United States v. Chaves County, D.N.M. [1-10-1985] [*History, Scope, and Purpose*, 2836]

United States v. Roswell Independent School District, D.N.M. [3-12-1985] [*History, Scope, and Purpose*, 2836]

United States v. McKinley County, No. 86-0028 (D.N.M.1986) – Also Sec. 203 [*Evidence of Continuing Need*, 4026-28, 4035; *History, Scope, and Purpose*, 2836]

United States v. State of New Mexico and Sandoval County, No. 88-1457 (D.N.M. 1990) – Also Sec. 203 [*Evidence of Continuing Need*, 4029-30, 4035; *History, Scope, and Purpose*, 2837]

United States v. Cibola County, No. 93-1134 (D.N.M. 2004) – Also Sec. 203 [*Evidence of Continuing Need*, 4033-35; *History, Scope, and Purpose*, 2837]

United States v. Socorro County, No. 93-1244 (D.N.M. 1994) – Also Sec. 203 [*Evidence of Continuing Need*, 4030-31; *History, Scope, and Purpose*, 2837]

United States v. Bernalillo County, No. 98-156 (D.N. M. 1998) [*History, Scope, and Purpose*, 2838]

*Appendix B***New York (3)**

United Parents Association v. Bd. Of Elections, No. 89 CIV 0612 (E.D.N.Y.) [*Evidence of Continuing Need*, 1889]

Arbor Hill Concerned Citizens Neighborhood Ass'n, No. 1:03cv502 (N.D.N.Y.)

Montano v. Suffolk County Legislature, No. 2:03cv1506 (E.D.N.Y.)

North Carolina (13)

NAACP v. City of Statesville, 606 F. Supp. 569 (W.D.N.C. 1985) [*Evidence of Continuing Need*, 1763, 1785-86]

NAACP v. Forsyth County, No. 6:86cv803 (M.D.N.C.) [*Evidence of Continuing Need*, 1764, 1787]

NAACP v. City of Thomasville, No. 4:86cv291 (M.D.N.C. 1987) [*Evidence of Continuing Need*, 1764, 1786]

NAACP of Stanley Co. v. City of Albemarle, No. 4:87cv468 (M.D.N.C.) [*Evidence of Continuing Need*, 1784]

NAACP v. Richmond County, No. 3:87cv484 (M.D.N.C.) [*Evidence of Continuing Need*, 1788]

NAACP v. Duplin Co., No. 88-5-CIV-7 (E.D.N.C.) [*Evidence of Continuing Need*, 1786]

Hall v. Kennedy, No. 88-117-CIV-3 (E.D.N.C.) [*Evidence of Continuing Need*, 1773-74]

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Johnson v. Town of Benson, No. 88-240-CIV-5 (E.D.N.C.)
[*Evidence of Continuing Need*, 1779]

Patterson v. Siler City, No. C-88-701 (M.D.N.C.)
[*Evidence of Continuing Need*, 923-24]

Sewell v. Town of Smithfield, No. 89cv360 (E.D.N.C.)
[*Evidence of Continuing Need*, 1794]

Montgomery County Branch of the NAACP v. Montgomery County, No. 3:90cv27 (M.D.N.C.) [*Evidence of Continuing Need*, 1782-83]

NAACP v. Rowan-Salisbury Bd. of Educ., No. 4:91cv293 (M.D.N.C.) [*Evidence of Continuing Need*, 1789]

Rowsom v. Tyrrell County Bd. of Comm'rs, No. 2:93cv33 (E.D.N.C.) [*Evidence of Continuing Need*, 953-54]

North Dakota (1)

United States v. Benson County, D.N.D. [3-6-2000]
[*History, Scope, and Purpose*, 2838]

Pennsylvania (1)

United States v. Berks County, E.D. Pa. [2-25-2003] –
Also Sec. 4(e), 208 [*Evidence of Continuing Need*, 4118,
4120-21, 4127; *History, Scope, and Purpose*, 2839]

Rhode Island (1)

Metts v. Almond, No. 1:02cv204 (D.R.I.) [*Evidence of Continuing Need*, 4081-82, 4086]

*Appendix B***Utah (1)**

United States v. San Juan County, No. C-83-1286 (D. Utah, 1984) – Also Sec. 203 [*Evidence of Continuing Need*, 4058-59; *History, Scope, and Purpose*, 2835]

South Dakota (4)

Buckanaga v. Sisseton Independent School District, South Dakota, 804 F.2d 469 (8th Cir. 1986) [*Evidence of Continuing Need*, 1999, 4514, 4731]

United States v. Day County and Enemy Swim Sanitary Dist., No. 1:99cv1024 (D.S.D.) [*Evidence of Continuing Need*, 2000, 4403-04, 4425; *History, Scope, and Purpose*, 2838]

Weddell v. Wagner Community School District, No. 4:02-4056 (D.S.D.) [*Evidence of Continuing Need*, 1172-73]

Kirkie v. Buffalo County, No. 3:03cv3011 (D.S.D.) [*Evidence of Continuing Need*, 1171-72, 4734]

Tennessee (2)

United States v. City of Memphis, W.D. Tenn. [2-15-1991] [*History, Scope, and Purpose*, 2838, 2837]

United States v. Crockett County, No. 1:01cv1129 (W.D. Tenn.) [*History, Scope, and Purpose*, 2839]

**APPENDIX C — DECLARATION OF
ROBERT S. BERMAN WITH ATTACHMENTS,
FILED IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA,
NOVEMBER 15, 2010**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**Civil Action No.
1:10-cv-00651-JDB**

SHELBY COUNTY, ALABAMA,

Plaintiff,

v.

**ERIC H. HOLDER, Jr., in his official capacity as
Attorney General of the United States,**

Defendant

DECLARATION OF ROBERT S. BERMAN

**I, Robert S. Berman, pursuant to 28 U.S.C. 1746,
declare as follows:**

- 1. I am an attorney who currently serves as a Deputy Chief in the Voting Section of the Civil Rights Division of the United States Department of Justice. I have supervisory responsibility for the administrative review of voting changes submitted to the Attorney**

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General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. I have been employed as an attorney in the Department of Justice for 32 years with over 20 years of service in the Voting Section.

2. I have personal knowledge of the information contained in this declaration based upon my review of relevant records maintained by the Department of Justice, as well as my professional experience with, and personal knowledge of, Department of Justice policies and procedures.
3. At least 31 jurisdictions located in whole or in part in Shelby County have submitted voting changes for administrative review under Section 5.
4. Since Shelby County was first required to comply with Section 5, the Department of Justice has received at least 682 submissions for review involving Plaintiff Shelby County or jurisdictions located in whole or in part in Shelby County. Of the 682 submissions, 291 were received from 19 jurisdictions located wholly within Shelby County.
5. The Attorney General has received at least 69 submissions for Section 5 review on behalf of Plaintiff Shelby County.
6. On April 8, 2010, the Department informed county officials that no objection would be interposed to Shelby County's most recent submission, which included a polling place change.

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7. Section 5 submissions from the Cities of Birmingham, Calera, Chelsea, and Helena, all subjurisdictions located in whole or in part in Shelby County, are currently pending the Attorney General's administrative review.
8. The Attorney General has interposed five objections to changes affecting voting in jurisdictions wholly or partially contained within Shelby County: a July 7, 1975, objection to six annexations to the City of Alabaster; a December 27, 1977, objection to two annexations to the City of Alabaster; a May 4, 1987, objection to annexations to the City of Leeds; an August 16, 2000, objection to the designation of two annexations to Ward 1 of the City of Alabaster (at the same time 42 annexations adopted between 1992 and 2000 were precleared); and an August 25, 2008, objection to 177 annexations, their designation to districts, and a redistricting plan for the City of Calera.
9. On March 13, 2008, the City of Calera, a subjurisdiction of Shelby County, submitted a redistricting plan, along with 177 annexations that the City adopted between 1995 and 2007 but had not previously submitted, and their designation to districts, to the Attorney General for administrative review under Section 5.
10. On August 25, 2008, the Attorney General interposed an objection to the voting changes occasioned by the City of Calera's proposed redistricting plan and 177 annexations. The letter, which is dated August 25,

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2008, and provides the factual and legal basis for the Attorney General's decision to interpose an objection, is appended as Attachment A.

11. On August 26, 2008, and October 7, 2008, the City of Calera conducted elections under the redistricting plan, which included the electorate of the objected-to 177 annexations, that was the subject of the Attorney General's August 25, 2008, objection. Attachment C at 4 (Consent Decree in *United States v. City of Calera*, CV-08-BE-1982-S (N.D. Ala. Oct. 29, 2008)).
12. On October 24, 2008, the United States filed an action against the City of Calera under Section 5 seeking to enjoin further implementation of changes affecting voting that had not received Section 5 preclearance. Attachment B (Complaint, *United States v. City of Calera*, CV-08-BE-1982-S (N.D. Ala. Oct. 24, 2008)).
13. On October 29, 2008, the court temporarily resolved this City of Calera matter through a consent decree that provided for an interim change in the method of election to an interim limited voting election plan, pending the results of the 2010 Census and a new special municipal election. *United States v. City of Calera*, CV-08-BE-1982-S (N.D. Ala. 2008); Attachment C (Oct. 29, 2008 Consent Decree).
14. On November 17, 2008 and March 24, 2009, the Attorney General denied the City of Calera's requests to withdraw his objections. Attachments D and E (Nov. 17, 2008 and Mar. 24, 2009 letters).

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15. On September 25, 2009, after the adoption of the interim limited voting election plan, the Attorney General withdrew his objection to the 177 annexations to the City of Calera and also informed city officials that no objection would be interposed to the city's proposed interim voting plan for the 2009 municipal election in Calera. The Attorney General's September 25, 2009, letter did not, however, withdraw his objection to the 2008 redistricting plan or the designation of annexations to districts. The September 25, 2009, letter is appended as Attachment F.

The Administrative Review Process

16. The Attorney General endeavors to comply with Congress's intent that the administrative review of voting changes submitted pursuant to Section 5 be an efficient, convenient, and affordable alternative to seeking a declaratory judgment from a three-judge court in the United States District Court for the District of Columbia.
17. To that end, the Attorney General has a long-standing policy of providing information to covered jurisdictions concerning the administrative review process by publishing the Procedures for the Administration of Section 5 of the Voting Rights Act of 1965 in the Code of Federal Regulations. 28 C.F.R. part 51. These procedures were first promulgated in 1971. 36 Fed. Reg. 18186 (Sept. 10, 1971), and are revised when necessary. *See, e.g.*, 75 Fed. Reg. 332050 (June 10, 2010).

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18. The Attorney General also has created a website that provides information concerning the Section 5 process (<http://www.usdoj.gov/crt/voting/>).
19. The Attorney General provides a toll-free telephone number for submitting officials to contact Department of Justice staff members, who are available to guide those officials through the submission process.
20. The Attorney General's procedures have always provided covered jurisdictions with the option to request expedited consideration of voting changes. 28 C.F.R. § 51.34. The Attorney General makes every effort to accommodate covered states and local jurisdictions that experience emergencies prior to elections that require expedited consideration of voting changes. Situations calling for expedited consideration include events such as fires or natural disasters that affect which polling places can be used in an election, or pre-election litigation that threatens to stop the conduct of an election. In appropriate circumstances, the Attorney General has made determinations within 24 hours or less of receipt of a submission.
21. The Attorney General also allows covered jurisdictions to send Section 5 submissions by overnight delivery. Shelby County availed itself of this option in a 2007 submission, which the jurisdiction sent by overnight delivery to the Attorney General.
22. For some years, the Department has allowed jurisdictions to make submissions and submit additional

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information on pending Section 5 submissions by telefacsimile. Shelby County availed itself of these options in 2004 and 2007, respectively, when it faxed a submission and additional information on pending Section 5 submissions to the Attorney General.

23. The Attorney General allows jurisdictions to make Section 5 submissions through a web-based application (http://wd.usdoj.gov/crt/voting/sec_5/evs/).
24. The Attorney General allows jurisdictions to submit additional information on pending Section 5 submissions by electronic mail.

Termination of Coverage Under the Act's Special Provisions

25. A jurisdiction may seek to terminate coverage under Section 4 of the Act, and thereby be relieved of the responsibility of complying with Section 5. 42 U.S.C. 1973b(a)(1).
26. Since 1965, of the approximately 943 county, parish, and township-level jurisdictions that conduct voter registration and were originally covered by Section 4, 57 of these jurisdictions (around 6.4%) have successfully bailed out and maintained their bailed out status. One state and several other jurisdictions also successfully bailed out and were later re-covered by new coverage determinations or by new court findings. Overall, since 1965, there have been 44 cases filed in which bailout was sought under Section 4(a). The

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United States consented to bailout in 36 of those cases and bailout was granted (and in one of these cases bailout was later rescinded); in three cases, the United States opposed bailout and the court denied bailout; in five cases, the jurisdiction dismissed its bailout action voluntarily after the United States opposed the bailout request.

27. Since the new bailout standard enacted in 1982 went into effect in 1984, the United States has consented to bailout in 21 cases. This included 18 cases involving county level jurisdictions (with 51 subjurisdictions) and three cases involving smaller jurisdictions. Hence, a total of 72 jurisdictions have been granted bailout since 1984.
28. If a jurisdiction requests termination of Section 4 coverage, the Attorney General conducts an independent investigation into whether the jurisdiction meets the statutory requirements.
29. The Attorney General has consented to every bailout action by a political subdivision filed since 1984, the effective date for the revised bailout provision.
30. Currently, the Attorney General is reviewing the informal requests of numerous jurisdictions to consent to terminate coverage under Section 4.
31. Since the Supreme Court's decision in *Nw. Austin Mun. Util. Dist. No. 1 v. Holder*, 129 S. Ct. 2504, 2513-17 (2009), the Attorney General has consented

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to bailout by three smaller subjurisdictions, including the Northwest Austin Municipal Utility District itself.

32. The Attorney General's independent investigations involve interviewing minority contacts, reviewing electoral behavior within the jurisdiction, and researching whether there are any unsubmitted voting changes, including reviewing a jurisdiction's minutes for the last 10 years to see if the jurisdiction has implemented any changes affecting voting that have not received the requisite Section 5 preclearance.
33. Shelby County advises that it has implemented at least one voting change prior to submitting the change for review. The County admits that it held a referendum election on April 9, 2002, prior to obtaining Section 5 preclearance. Complaint at 14; Pl. Statement of Material Facts 3-4. The County subsequently submitted for review and the Attorney General ultimately precleared under Section 5 the law providing for the April 9, 2002, referendum election.
34. The Attorney General has entered into consent decrees allowing bailout under Section 4 with other jurisdictions including, but not limited to, Roanoke County, Virginia, Shenandoah County, Virginia, and Frederick County, Virginia, where the jurisdictions had implemented isolated voting changes prior to submitting them for Section 5 review.
35. The Attorney General has neither conducted discovery in this case nor conducted the statutorily-

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required independent investigation as to Shelby County's eligibility to terminate Section 4 coverage. Accordingly, the Attorney General is unable to make a determination at this time as to whether Shelby County is eligible to terminate Section 4 coverage.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 15, 2010.

/s/
Robert S. Berman

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ATTACHMENT A

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 25, 2008

**Dan Head, Esq.
Wallace, Ellis, Fowler & Head
P.O. Box 587
Columbiana, Alabama 35051**

Dear Mr. Head:

This refers to 177 annexations, their designations to districts, and the 2008 redistricting plan for the City of Calera in Shelby County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our May 7, 2008, request for additional information on June 24, 2008; additional information was received through August 18, 2008.

According to the 2000 Census, the City of Calera has a total population of 3,158 persons, of whom 628 (19.9%) were identified as African American. We understand that the city has experienced sizeable growth since that

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time, due primarily to residential development on the 177 annexations now under review. The city has provided estimates that its population is at 10,806 persons as of December 2006, of whom 20 percent are identified as African American.

The submitted annexations and redistricting plan would eliminate the city's sole majority African-American district. This district and the single-member district method of election were adopted pursuant to a consent decree approved 18 years ago by the court in *Dillard v. City of Calera*, Civil Action No. 2:87cv1167-MHT. Under this arrangement, the district has elected an African-American candidate for the last 20 years.

We have carefully considered the information you have provided, as well as information and materials from other interested parties. Under Section 5 of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Public Law 109-246, 120 Stat. 577 (2006) ("Voting Rights Act"), the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. *See also Georgia v. Ashcroft*, 123 U.S. 2498 (2003); Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.52 (c). As discussed further below, I cannot conclude that the city has sustained its burden of showing that the proposed change does not have a discriminatory purpose or effect. Therefore, based on the information available to us, I object to the voting changes on behalf of the Attorney General.

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The United States Supreme Court has held that where annexations decrease minority voting strength, the reasons for the annexations must be objectively verifiable and legitimate, and the post-annexation election system must fairly reflect the post-annexation voting strength of the minority community in the expanded city. *City of Richmond v. United States*, 422 U.S. 358, 370-3 (1975); *see also*, *City of Pleasant Grove v. United States*, 479 U.S. 462 (1987); *City of Port Arthur v. United States*, 459 U.S. 159 (1982); *City of Rome v. United States*, 446 U.S. 156 (1980).

For 13 years, the city has failed to submit their adopted annexations for Section 5 review. Our Department has not received an annexation submission from the city since 1993, and the city admits that it is at fault for not submitting the 177 annexations. The only submission in the last 13 years was a proposed redistricting plan based on the 2000 Census which included no mention of the missing annexations.

In a similar situation, the United States Supreme Court in *City of Rome v. United States*, 446 U.S. at 186, made it clear that the current population of the annexations needs to be included for Section 5 review:

Because Rome's failure to preclear any of these annexations caused a delay in federal review and placed the annexations before the District Court as a group, the court was correct in concluding that the cumulative effect of the 13 annexations must be examined from the perspective of the most current available population data.

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The Supreme Court found that the City of Rome failed to provide the necessary information about total population, voting age population, and a racial composition for each. *Id.* Likewise, the City of Calera also has failed to provide any reliable current population information about the 177 annexations here.

The demographic data provided by the city regarding total population and voting age population in the city as a whole is also unreliable. Beginning with total population, the city used certificate of occupancy data to estimate total population in December 2006 of 10,806. The city arrived at this number by decreasing the persons per household multiplier of 2.3 significantly from the 2000 Census without explanation. Had the city used the 2000 Census number, the population estimate would have been approximately 12,000 persons. The United States Census Bureau estimated the population in July 2006 at 8,329 and in July 2007 at 9,398. The city has not explained why its population estimate is substantially higher than the Census estimate. Likewise, the city fails to provide reliable voting age population.

The estimate of racial composition in the city has no basis. The city has claimed that the population is 20 percent black throughout the newly annexed areas, but no attempt has been made to determine their composition. Simply because black population in the city was 20 percent of the population in 2000, does not mean that would be the percentage of black population in the newly annexed areas. In fact, both city-wide voter registration and school data in recent years appear to show growth in the black

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population. In failing to provide adequate numbers to evaluate the annexations and concomitant redistricting plan, the city fails to meet its burden of proof.

The City of Calera also appears to have failed to consider how the African-American population would be fairly reflected in the post-annexation election system moving forward. In March 2007, three months prior to the adoption of the proposed redistricting plan, the State of Alabama and plaintiffs filed a Joint Motion to Show Cause asking why the case should not be dismissed. In that order to show cause, they stated that the Alabama legislature in Act No. 2006-252 provide that the Calera City Council can increase the size of the city council under the single-member district method of election by general or local law in the future. The court dissolved the consent decree on May 9, 2007. According to the geographer hired by the city, he was willing to provide information for the city to consider alternative methods of election that would have provided black voters a better opportunity to elect a candidate of choice, but the city council expressed no interest in these alternatives.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. *See* 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. *See* 28 C.F.R. 51.45. However, until the objection is withdrawn

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or a judgment from the District Court for the District of Columbia is obtained, the annexations and concomitant redistricting plan will continue to be legally unenforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Calera plans to take concerning this matter. If you have any questions, you should call Eric Rich (202-305-0107), an attorney in the Voting Section.

Sincerely,

/s/

Grace Chung Becker

Acting Assistant Attorney General

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ATTACHMENT B

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

CV-08-BE-1982-S

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

**THE CITY OF CALERA, ALABAMA; GEORGE
W. ROY, Mayor of City of Calera; JERRY DAVIS,
ERNEST MONTGOMERY, BOBBY JOE PHILLIPS,
DAVID BRADSHAW and MILE ROBERSON, Council
members of City of Calera; LINDA STEELE, City
Clerk for City of Calera;**

Defendants.

COMPLAINT

The United States of America, plaintiff herein, alleges:

1. This action is brought on behalf of the United States by the Attorney General pursuant to Sections 5 and 12(d) of the Voting Rights Act of 1965, as amended 42 U.S.C. 1973c and 1973j(d), and pursuant to 28 U.S.C. 2201, to enforce rights guaranteed by Section 5 of the

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Voting Rights Act and the Fourteenth and Fifteenth Amendments to the United States Constitution.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to 42 U.S.C. 1973c, 42 U.S.C. 1973j(f), and 28 U.S.C. 1345. Venue properly lies in this Court under 28 U.S.C. 1391(b)(1), (2). The City of Calera, Alabama, lies within this Judicial District and is the place where the events giving rise to the claim occurred. Defendant City of Calera officials also reside and perform their official duties in this Judicial District. Upon information and belief, all Defendants reside in the State of Alabama.

PARTIES

3. The Attorney General, representing plaintiff United States of America, is charged by the Voting Rights Act with the statutory responsibility both for the Act's Administrative preclearance process, and with bringing actions in Federal court to enforce the Act's requirements. *See* 42 U.S.C. 1973j(d).

4. Defendant City of Calera, Alabama, is charged with the responsibility of ensuring that its elections laws, as applied, comply with Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c ("Section 5").

5. Defendant George W. Roy is the Mayor of the City of Calera and in that capacity serves as the head of the Executive Branch of city government. Defendant Roy is charged with the responsibility of legislating and enforcing

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compliance with city ordinances, including drawing voting districts and annexations pertaining to the establishment of city municipal election districts. Defendant Roy is sued in his official capacity.

6. Defendants Jerry Davis, Ernest Montgomery, Bobby Joe Phillips, David Bradshaw and Mile Roberson are Council Members of the City of Calera City Council and in that capacity charged with the responsibility of legislating ordinances, including drawing voting districts and annexations pertaining to the establishment of city municipal election districts. Defendants Davis, Montgomery, Phillips, Bradshaw and Roberson are sued in their official capacities.

7. Defendant Linda Steele is the City Clerk for the City of Calera and in such capacity presides over the election process, including voter registration, candidate qualifying, running of the municipal elections, and certifies results of elections as well as actions taken by the City of Calera City Council. Defendant Steele is sued in her official capacity.

ALLEGATIONS

8. The defendants named herein have authority under Alabama law to enact or administer voting qualifications or prerequisites to voting, or standards, practices, or procedures with respect to voting different from those in force or effect on November 1, 1964.

9. The City of Calera, Alabama, is subject to the preclearance requirements of Section 5.

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10. Section 5 states that any “voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting” different from that in force or effect in the City of Calera, Alabama, on November 1, 1964, may not be lawfully implemented unless the State of Alabama, or other appropriate authority with the power to enact or administer voting changes such as the City of Calera, obtains a declaratory judgment from the United States District Court for the District of Columbia that the changes does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. However, such change may be implemented without such judgment if it has been submitted to the United States Attorney General, and the Attorney General has not interposed an objection within sixty days. 42 U.S.C. 1973c.

11. According to the U.S. Census Bureau, in 2000, Calera had 3,158 residents, of whom 628 (19.9%) are African American, 60 (1.9%) are Hispanic, 27 (0.9%) are Native American, and 18 (0.6%) are Asian. The voting-age population totaled 2,314 residents, with 404 (17.5%) African Americans, 33 (1.4%) Hispanics, 22 (1.0%) Native Americans, and 9 (0.4%) Asians. According to the Census Bureau, as of July 2004, the City of Calera’s population was 5,918; as of July 2006, the population was 8,329; and as July 2007, the population estimate indicates there is a population of 9,398. The City of Calera estimated that as of December 2006, its populations was 10,806, of whom 20.24 percent are African American.

12. As of August 10, 2004, the City of Calera had 3,027 registered voters, of whom 400 (13.2%) were identified

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as African American, and 43 (1.4%) identified as “other.” As of July 30, 2008, Shelby County, wherein the City of Calera is located, reported that there are 4,680 registered voters in the City of Calera, of whom 773 (16.5%) are African American, 11 (0.2%) are Hispanic, 1 (0.02%) is Native American, 3 (0.1%) are Asian, and 84 (1.7%) are listed as “other.”

13. The City of Calera is governed by a mayor and five council members. The mayor is a voting member of the Council and is elected at-large for a four-year term. Council members are elected from single-member districts to serve concurrent four-year terms. General elections occur in August of Presidential election years.

14. The City of Calera’s five single-member districts were created by a consent decree in the case of *Dillard v. City of Calera*, M.D. Alabama, Civil Action No. 2:87cv1167-MHT(WO, in which the Court found evidence of racially polarized voting. The parties agreed to change the City of Calera’s form of government for the election of its Council members from at-large, numbered posts to the current five single-member district plan, with one majority African American district. The consent decree was entered on January 3, 1990.

15. On March 7, 2007, the State of Alabama and plaintiffs in the case filed a Joint Motion to Show Cause asking why the case should not be dismissed. In that order to show cause, the parties argued that the Alabama legislature in Act No. 2006-252 provided that the City Council for the City of Calera could thereafter increase the size of the city council under the single-member

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district method of election by general or local law. Act No. 2006-252 also provided authority for the city to have single-member districts. Given the ability of the city to change the size of its body with the single-member district method of election, there was no reason for the court to retain jurisdiction to administer the consent decree, and thus, the Court dismissed the case on May 9, 2007.

16. The City of Calera submitted for review under Section 5 177 annexations to the district boundaries and jurisdiction of the City that had been implemented between 1993 and 2008. The City of Calera also submitted for review under Section 5 a concomitant redistricting plan which provided for a change in the boundaries of the City Council's voting districts. The proposed redistricting maintained five single-member districts, but had the effect of dissolving the only majority-minority district. The redrawn district 2 reduced the African American registered voters in the district from 70.9% to 29.5%.

17. On August 25, 2008, the Attorney General interposed a timely objection under Section 5 to the submitted annexations to the City of Calera's redistricting plan and the 177 annexations on the grounds that the submitting authority had failed to meet its burden of establishing that the proposed changes would not have a discriminatory purpose and effect on minority voters. The objection letter is attached as Exhibit A.

18. The City of Calera held an election for mayor and council members on August 26, 2008 and a run-off election on October 7, 2008 using the objected-to district

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boundaries and electorate that included the objected-to annexations.

19. Defendants have not obtained a judgment from the United States District Court for the District of Columbia pursuant to Section 5 declaring that the proposed districts and annexations have neither the purpose nor the effect of denying or abridging the right to vote on account of race or color.

20. The failure of defendants to obtain Section 5 preclearance of the proposed district boundaries and annexations renders these voting changes legally unenforceable.

21. Unless enjoined by this Court, defendants will continue to violate the Voting Rights Act by continuing to administer and implement the objected-to change in district boundaries and electorate by certifying the results of the August 26, 2008 and October 7, 2008 elections. The prevailing candidates will be sworn into office on November 3, 2008.

WHEREFORE, the United States of America prays that a court of three judges be convened to hear this action pursuant to 42 U.S.C. 1973c and 28 U.S.C. 2284 and thereafter enter a judgment:

- (1) Declaring that the changes in district boundaries and electorate for City of Calera elections constitute changes affecting voting within the meaning of Section 5 of the

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Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, and are legally unenforceable because they have not received the requisite preclearance under Section 5 of the Voting Rights Act;

- (2) Declaring that implementation of the changes in district boundaries and electorate for City of Calera elections violates Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c; and
- (3) Enjoining defendants, their successors in office, their agents and all persons acting in concert or participation with them, from administering or implementing the district boundaries and electorate to which the Attorney General has interposed a timely objection unless and until preclearance under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, is obtained; and
- (4) Enjoining defendants, their successors in office, their agents and all persons acting in concert or participation with them, from certifying the results of the August 26, 2008, and October 7, 2008 municipal elections, which was based on the district boundaries and electorate to which the Attorney General has interposed a timely objection unless and until preclearance

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under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, is obtained; and

- (5) Enjoining defendants, their successors in office, their agents and all persons acting in concert or participation with them, from swearing in the prevailing candidates on November 3, 2008, which would be based on the district boundaries and electorate to which the Attorney General has interposed a timely objection unless and until preclearance under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c.

Plaintiff further prays that this Court grant such additional relief as the interests of justice may require, together with the costs and disbursements of this action.

MICHAEL B. MUKASEY
Attorney General

/s/
GRACE CHUNG BECKER
Acting Assistant Attorney General
Civil Rights Division

ALICE H. MARTIN
United States Attorney

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/s/

Sharon D. Kelly
Chief, Civil Division
U.S. Attorneys Office

/s/

CHRISTOPHER COATES
Chief, Voting Section
TIMOTHY F. MELLETT
CHRISTY A. McCORMICK
Attorneys, Voting Section
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Washington, DC 20530
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Appendix C

ATTACHMENT C

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

**CIVIL ACTION NO.
CV-08-BE-1982-S**

CONSENT DECREE

Three-Judge District Court

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE CITY OF CALERA, ALABAMA, *et al.*,

Defendants.

The Attorney General of the United States of America ("Attorney General") filed this action pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c (Section 5"). The Court has jurisdiction of this action pursuant to 28 U.S.C. 1345 and 42 U.S.C. 1973C and 1973j(f). In accordance with the provisions of 42 U.S.C. 1973c and 28 U.S.C. 2284, the Section 5 claim must be heard and determined by a court of three judges. The events relevant to this action occurred in the City of

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Calera, Alabama, which is located in the United States District Court for the Northern District of Alabama, Southern Division. *See* 28 U.S.C. 124.

The Attorney General, representing plaintiff United States of America, is charged by the Voting Rights Act with the statutory responsibility both for the Act's administrative preclearance process, and with bringing actions in Federal court to enforce the Act's requirements. *See* 42 U.S.C. 1973j(d).

The State of Alabama and its subdivisions are subject to the preclearance requirements of Section 5. *See* 42 U.S.C. 1973c; *see also* 28 C.F.R. Part 51, Appendix. Section 5 provides that any "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" different from that in force or effect in the State of Alabama or its subdivisions on November 1, 1964, may not be lawfully implemented unless such change has been submitted to the Attorney General, and the Attorney General has not interposed an objection within sixty days, or the jurisdiction obtains a declaratory judgment from the United States District Court for the District of Columbia that the change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. *See* 42 U.S.C. 1973c.

Defendant City of Calera ("City") is a subdivision of the State of Alabama and is therefore subject to the Section 5 preclearance requirements. The City is governed by a mayor, elected at large, and a five-member city

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council, elected from five single-member districts, each for four-year concurrent terms.

Defendant Mayor and City Council members are the governing body for the City and, along with the City Clerk, are responsible for implementing and administering voting changes and conducting elections for the City.

On March 18, 2008, the City submitted for Section 5 review 177 annexations to the district boundaries of the City that had been implemented between 1993 and 2008 and a concomitant redistricting plan which provided for a change in the boundaries of the City Council's voting districts. On May 7, 2008, the Attorney General informed the City of Calera that determination was not possible in that supplementary information was required. On July 24, 2008, the City submitted that additional information to enable the Attorney General to conduct his review.

On August 25, 2008, the Attorney General interposed a timely objection under Section 5 to the submitted annexations to the City of Calera's redistricting plan and the 177 annexations on the grounds that the submitting authority had failed to meet its burden of establishing that the proposed changes would not have a discriminatory purpose or effect on minority voters.

On August 26, and October 7, 2008, the City proceeded with municipal elections using the district boundaries and electorate that included the annexations objected to by the Attorney General under section 5 of the Voting Rights Act.

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To avoid protracted and costly litigation, the parties have agreed that this lawsuit should be resolved through the terms of this Consent Decree ("Decree"). Accordingly, the United States and the Defendants hereby consent to the entry of this Decree, as indicated by the signatures of counsel at the end of this Decree. The parties waive a hearing and entry of findings of fact and conclusions of law on all issues involved in this matter. Each party shall bear its own costs and fees. Defendants are committed to fully complying with all the Section 5 preclearance requirements in the future. Accordingly, the United States and Defendants stipulate and agree to the following:

1. The City of Calera, Alabama is a covered jurisdiction within the meaning of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c.

2. The 177 annexations and the concomitant redistricting plan submitted by the City of Calera to the Attorney General constitute voting changes within the meaning of Section 5. The voting changes are legally unenforceable unless they receive the requisite preclearance under Section 5 of the Voting Rights Act. *See Clark v. Roemer*, 500 U.S. 649 (1991); 28 C.F.R. 51.10.

3. On August 25, 2008, the Attorney General interposed a timely objection to the 177 annexations and the concomitant redistricting plan submitted by the City of Calera. These annexations and the redistricting plan have not received preclearance from the United States District Court for the District of Columbia or the United States Attorney General, as required under Section 5 of the Voting Rights Act.

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4. Defendants' conducted the August 26, and October 7, 2008, City of Calera municipal elections based on the unprecleared voting changes, including the annexations and the concomitant redistricting plan. The candidates who prevailed in those elections would be sworn into office on November 3, 2008.

5. Irreparable harm would be caused by Defendants' continued administration and implementation of the unprecleared voting changes.

6. On September 16, 2008, Defendants sought reconsideration of the August 25, 2008, objection, and the Attorney General has committed to providing a decision by no later than November 17, 2008. The Attorney General will issue a decision by October 31, 2008, if it is possible.

Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. In the event that the Attorney General withdraws the August 25, 2008, objection, the United States agrees that the necessary Section 5 preclearance will have been obtained, and the candidates prevailing in the August 26, and October 7, 2008 elections may be sworn into office.

2. In the event that the Attorney General has not made a decision by October 31, 2008, the Defendants, their agents, their successors in office, and all persons acting in concert with them, are ENJOINED from allowing the candidates prevailing in the August 26, and October 7, 2008 elections to be sworn into office, unless the Attorney General subsequently withdraws the August 25, 2008

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objection, or unless the United States District Court for the District of Columbia preclears the annexations and redistricting plan.

3. In the event that the Attorney General continues the August 25, 2008, objection, Defendants, their agents, their successors in office, and all persons acting in concert with them, are **PERMANENTLY ENJOINED** from allowing the candidates prevailing in the August 26, and October 7, 2008 elections to be sworn into office, unless the Attorney General subsequently withdraws the August 25, 2008 objection, or unless the United States District Court for the District of Columbia preclears the annexations and redistricting plan.

4. Defendants, their agents, their successors in office, and all persons acting in concert with them, are **ENJOINED** from administering or attempting to administer any election using the 177 annexations and concomitant redistricting plan until Defendants obtain Section 5 preclearance.

5. If the August 25, 2008 objection is not withdrawn, Defendants shall reschedule the August 26, and October 7, 2008 municipal elections to a special election date in 2009. Defendants shall follow state law requirements in conducting the election, and Defendants shall submit the special election date for the necessary Section 5 preclearance.

6. This decree is final and binding between the parties and their successors in office regarding the claims raised in this action. This Decree shall remain in effect

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through December 31, 2009, or until the annexations and redistricting plan are precleared, whichever occurs first.

7. The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with Section 5 of the Voting Rights Act.

Agreed to this 29 day of October, 2008.

AGREED AND CONSENTED TO:

For Plaintiff:

MICHAEL B. MUKASEY
Attorney General

/s/
GRACE CHUNG BECKER
Acting Assistant Attorney General
Civil Rights Division

/s/
CHRISTOPHER COATES
Chief, Voting Section
TIMOTHY F. MELLETT
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ALICE H. MARTIN
United States Attorney

/s/
Sharon D. Kelly
Chief, Civil Division
U.S. Attorneys Office

For Defendants:

/s/
FRANK ELLIS, Esq.
Wallace, Ellis, Fowler & Head
P.O. Box 587
Columbiana, Alabama 35051

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JUDGMENT AND ORDER

This Court, having considered the United States' claim under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree, and hereby enters the relief set forth above and incorporates those terms herein.

ENTERED and ORDERED this 29th day of October, 2008.

/s/
UNITED STATES CIRCUIT JUDGE

/s/
UNITED STATES DISTRICT JUDGE

/s/
UNITED STATES DISTRICT JUDGE

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ATTACHMENT D

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 17, 2008

**Frank C. Ellis, Esq.
Wallace, Ellis, Fowler & Head
P.O. Box 587
Columbiana, Alabama 35051**

Dear Mr. Ellis:

This refers to your request that the Attorney General reconsider and withdraw the August 25, 2008, objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to 177 annexations, their designation to districts, and the 2008 redistricting plan for the City of Calera in Shelby County, Alabama. We received your request on September 16, 2008, with additional information received through November 7, 2008.

We have reconsidered our earlier determination in this matter. We based this review on the information and arguments you have advanced in support of your request, along with the other information in our files and comments

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received from other interested parties. The city submitted data from a demographic survey conducted subsequent to our objection. The survey purports to indicate population, by race, that has been added to the city as a result of post-2000 residential development. The survey was sent to 3,055 households in 32 new housing developments. There were 21 new housing developments in the annexed areas and 11 new housing developments within the 1993 boundaries of the city. The survey requested information about total population, voting age population, registered voters, and whether survey respondents were "white" or "non-white." The city received 990 responses, a 31 percent return rate. According to survey data, 12.7 percent of the population in respondent households is nonwhite. The city cites this result as evidence that it would have been impossible to reapportion the city's five districts while maintaining the black majority in District 2.

Although the information provided does increase the understanding of the population growth in the City of Calera, the city has failed to provide information necessary to the review of the submitted changes. We have requested that the city provide reliable estimates for the entire area of annexed territory. These projections should include the total and voting-age population, broken out by race. Our guidelines identify the information necessary to the review of annexations and redistricting plans. In particular, 28 C.F.R. 51.28 (a)(1) requires that jurisdictions provide the "Total and voting-age population of the affected area before and after the change, by race and language group;" and subsection (a)(3) requires "Any estimates of population, by race and language group,

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made in connection with the adoption of the change.” The jurisdiction failed to provide these estimates.

The city did not use the survey results to estimate the population for the districts in the proposed redistricting plan. The city also failed to provide the racial breakdown in each district. This would have allowed the city to determine if adding or removing different developments may have avoided the resulting elimination of the ability of black voters to elect a candidate of choice.

The city also has failed to address a key concern as to whether the survey data supports the city’s assertion that a less retrogressive district plan could not have been drawn. The results of the August 26, 2008, election demonstrate the impact of the changes on the minority franchise in the city. Prior to this election, voters in District 2 had elected an African-American councilman for 20 years. In the election under the objected-to district lines, the African-American incumbent was defeated, although the prevailing candidate has been enjoined by a three-judge court from taking office. *United States v. City of Calera*, 2:08-cv-1982-KOB (N.D. Ala.) (October 29, 2008). The city has not provided any analysis demonstrating that it could not develop a proposed plan that would increase the black population in District 2. Thus, the city has failed to demonstrate that the retrogression was unavoidable.

Finally, the city has failed to consider alternative election methods for mitigating the impact of the proposed changes. The Supreme Court has held that where annexations decrease minority voting strength, the post-annexation election system must fairly reflect the post-

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annexation voting strength of the minority community in the expanded city. *City of Richmond v. United States*, 422 U.S. 358, 370-3 (1975); *see also*, *City of Pleasant Grove v. United States*, 479 U.S. 462 (1987); *City of Port Arthur v. United States*, 459 U.S. 159 (1982); *City of Rome v. United States*, 446 U.S. 156 (1980).

In light of these considerations, I remain unable to conclude that the City of Calera has carried its burden of showing that the submitted changes have neither a discriminatory purpose nor a discriminatory effect. *See Georgia v. United States*, 411 U.S. 526 (1973): 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the 177 annexations, their designations to districts, and the 2008 redistricting plan.

As we previously advised, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. We remind you that unless the objection is withdrawn or a judgment from the District Court for the District of Columbia is obtained, the annexations, their designations and the concomitant redistricting plan will continue to be legally unenforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Calera plans to take concerning this matter. If you have

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any questions, you should call Mr. Eric Rich (202-305-0107), an attorney in the Voting Section.

Because the Section 5 status of the changes is before the Court in *United States v. City of Calera*, 2:08-cv-1982-KOB (N.D. Ala.), we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,

/s/

Grace Chung Becker

Acting Assistant Attorney General

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ATTACHMENT E

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 24, 2009

**Frank C. Ellis, Esq.
Wallace, Ellis, Fowler & Head
P.O. Box 587
Columbiana, Alabama 35051**

Dear Mr. Ellis:

This refers to your second request that the Attorney General reconsider and withdraw the August 25, 2008, objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to 177 annexations, their designation to districts, and the 2008 redistricting plan for the City of Calera in Shelby County, Alabama. We received your request on January 23, 2009; supplemental information was received through March 10, 2009.

On September 16, 2008, the Department received the city's first request for reconsideration of the August 25, 2008 objection. On November 17, 2008, the Department continued the August 25, 2008 objection, finding that the city failed to provide necessary information in a number of key areas. We received your second request

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for reconsideration on January 23, 2009. In this latest reconsideration request, the city submitted analysis of the demographic survey data and responses to our November 17, 2008 letter.

Having reviewed these materials, I remain unable to conclude that the City of Calera has carried its burden of showing that the submitted changes have neither a discriminatory purpose nor a discriminatory effect. *See Georgia v. United States*, 411 U.S. 526 (1973): 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must again decline to withdraw the objection to the 177 annexations, their designations to districts, and the 2008 redistricting plan.

According to the 2000 Census, the City of Calera has a total population of 3,158 persons, of whom 628 (19.9%) were identified as African American. The city has experienced sizeable growth since that time, due primarily to residential development on the 177 annexations now under review. In the latest reconsideration request, the city's analysis showed, "approximately 13%, of 995 persons, of an estimated 7,648 residents who have moved into the City of Calera are minority residents." January 22, 2009 letter, Exhibit 1 at 2. If these figures are added together, the total population is 10,806, of whom 1,623 (15%) were identified as non-white.¹

1. The city failed to estimate the total population and the minority population in a consistent manner. The city arrived at a total population estimate by using 2000 Census total population and adding an estimate for the total population based upon building permit and certificate of occupancy data from 2006. The city determined the estimate for the percentage of minority

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The city states that the survey data demonstrates a dramatic drop in the city's nonwhite population as a percentage of the city as a whole since the 2000 Census. The city also has revised the numbers for its proposed districts based on a new analysis by its geographer. The analysis shows that the proposed District 2 would have a 31.5 percent nonwhite population, a drop from the city's estimate in its initial submission.

Although the city claims that African-Americans have become a smaller percentage of the population as a whole over the years, the city does not adequately account for the fact that, both citywide voter registration and school data in recent years have shown that the black population has become a larger percentage of the population. For example, in 2004 the non-white voter registration was 14.7 percent and the black registration was 13.2 percent of total registrants. Registration data obtained from the November 2008 general election show that non-white registration is 21.3 percent of Calera's registrants and black registrants comprise nearly 19 percent of the total. In contrast, the city's estimates show a total minority population of 15 percent. There has been no evidence presented to show that black voters are more likely to register to vote than white voters in the City of Calera.

The question of reliability is highly relevant in light of the fact that the submitted annexations and redistricting plan would eliminate the city's sole majority African-

population by using the survey data from 2008. The city then used the minority population percentage from the survey and applied it to the total population data from 2006 to arrive at the number of minority persons in the five proposed districts.

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American district. This district and the single-member district method of election were adopted pursuant to a consent decree approved 18 years ago by the court in *Dillard v. City of Calera*, Civil Action No. 2:87cv1167-MHT. As you are aware, the black incumbent lost his bid for reelection in an election that was held under the new district lines, even though the city had not obtained Section 5 preclearance for the annexations and districting plan.

Once again, the city has failed to appropriately consider alternative election methods for mitigating the impact of the proposed changes. The Supreme Court has held that where annexations decrease minority voting strength, the post-annexation election system must fairly reflect the post-annexation voting strength of the minority community in the expanded city. *City of Richmond v. United States*, 422 U.S. 358, 370-3 (1975); *see also*, *City of Pleasant Grove v. United States*, 479 U.S. 462 (1987); *City of Port Arthur v. United States*, 459 U.S. 159 (1982); *City of Rome v. United States*, 446 U.S. 156 (1980).

The consent decree in *Dillard v. City of Calera* was dissolved because, *inter alia*, the State of Alabama had adopted law that allowed jurisdictions to maintain minority representation by increasing the size of the governing body or by other methods. The city can increase the number of seats to provide representation and then draw a district that will allow black voters to elect a candidate of choice. The city states that it could only achieve a majority-minority district by implementing a 15-district plan. Our analysis of registered voters show that a viable district is possible under an eight-district

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plan. Moreover, our analysis suggests that alternatives are available even under a five-district plan to mitigate retrogression.

As we previously advised, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. We remind you that unless the objection is withdrawn or a judgment from the District Court for the District of Columbia is obtained, the annexations, their designations and the concomitant redistricting plan will continue to be legally unenforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Calera plans to take concerning this matter. If you have any questions, you should call Mr. Erich Rich (202-305-0107), an attorney in the Voting Section.

Because the Section 5 status of the changes is before the Court in *United States v. City of Calera*, 2:08-cv-1982-KOB (N.D. Ala.), we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,

/s/

Loretta King

Acting Assistant Attorney General

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ATTACHMENT F

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 25 2009

**Dan Head, Esq.
Wallace, Ellis, Fowler & Head
P.O. Box 587
Columbiana, Alabama 35051**

Dear. Mr. Head:

This refers to your third request that the Attorney General reconsider and withdraw the August 25, 2008, objection to 177 annexations interposed under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. This also refers to the interim voting plan for the 2009 municipal election, which consists of a change in method of election from five single-member districts to an at-large, limited voting plan, an increase in the number of council members from five to six, and a plurality vote requirement; and five additional annexations with one technical correction to a previously submitted annexation, for the City of Calera in Shelby County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission

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on July 29, 2009; supplemental information was received through August 25, 2009.

On September 16, 2008, the Department received the city's first request for reconsideration of the August 25 objection. On November 17, 2008, the Department continued the objection, finding that the city failed to provide necessary information in a number of key areas. We received your second request for reconsideration on January 23, 2009. On March 24, 2009, the Department once again continued the objection, with similar findings.

In this latest reconsideration request, the city submitted an interim voting plan for the 2009 municipal election that will be used in lieu of a single-member district plan. We have reconsidered our earlier determination regarding the 177 annexations based on the information and arguments you have advanced in support of your request, along with other information in our files and comments received from other interested persons.

The city's adoption of the at-large, limited voting plan with six councilmembers for the 2009 municipal election reflects a good faith effort to effectively remedy the concerns raised in our objection and subsequent objection continuations. The interim plan does not depend upon the location of minority populations in order to provide African-American voters a meaningful opportunity to elect a candidate of choice. Instead, the voting system proposed here will preserve African-American voting strength so long as these voters equal or exceed a specific percentage of the electorate, known as the "threshold of exclusion." Our review of voter registration and turnout

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data shows that the interim voting plan will provide African-American voters with the opportunity to elect a candidate of choice to the city council.

Accordingly, pursuant to the Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.48(b), the objection interposed against the 177 annexations is hereby withdrawn. No other portion of the August 25 objection has been withdrawn (i.e. the 2008 redistricting plan or the designation of the 177 annexations to districts).

With regard to the interim voting plan for the 2009 municipal election, which consists of a change in method of election from five single-member districts to an at-large, limited voting plan, an increase in the number of council members from five to six, and a plurality vote requirement; as well as five additional annexations with one technical correction to a previously submitted annexation, the Attorney General does not interpose any objection to the specified changes. Approval of this interim plan does not change the benchmark (submission no 2004-3101) for any plans submitted after the 2010 Census. In addition, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of all of the submitted changes. 28 C.F.R. 51.41.

Sincerely,

/s/

Loretta King

Acting Assistant Attorney General

**APPENDIX D — DECLARATION OF DR. SARAH
BRINEGAR, FILED IN THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA, JANUARY 14, 2011**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 1:10-cv-00651-JDB

SHELBY COUNTY, ALABAMA,

Plaintiff,

v.

**ERIC H. HOLDER, Jr., in his official capacity
as Attorney General of the United States,**

Defendant

DECLARATION OF DR. SARAH BRINEGAR

**Pursuant to 28 U.S.C. § 1746, I, Sarah Brinegar, make
the following declaration:**

1. My name is Sarah Brinegar. I am a Social Science Analyst employed since January, 2008 by the Voting Section, Civil Rights Division, of the United States Department of Justice. My responsibilities include obtaining and analyzing Census data in support of voting rights litigation and administrative review of voting changes submitted for review pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c ("Section 5"); using Geographic Information Systems to draw and assess districting plans in the course of voting rights litigation and Section 5 review; and instructing attorneys in the use of Census data.

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2. I am a professional geographer by training, earning a B.A. in geography from the University of Illinois (Champaign-Urbana) in 1992; an M.A. in geography from Western Illinois University in 1996; and a Ph.D. in geography from Arizona State University in 2000. These degree programs included training in quantitative research methods and computer based mapping and analysis.

3. From May 2001 to December 2007, I was a faculty member of the Geography Department at Marshall University, West Virginia. When I left Marshall University to take my current position in the Department of Justice, I was a tenured Associate Professor. To date, I have authored solely or been the lead author in six research articles published in peer-reviewed scientific journals, four of which utilized quantitative research methods.

4. I have been asked by attorneys for the Department of Justice to determine the proportion of the country's Black population which resides inside and outside of Section 5 covered jurisdictions. I have also been asked to determine the proportion of the country's minority population which resides inside and outside of Section 5 covered jurisdictions.

Method

5. Determining population counts within and without Section 5 covered jurisdictions involved downloading Census 2000 data into a statistical software program (SPSS), specifying Section 5 covered jurisdictions, and performing basic calculations. A dataset consisting of

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Census 2000 redistricting data (PL94-171, Table PL2) for all U.S. counties was downloaded from the Census Bureau's webpage and imported into an SPSS datafile. To split the datafile and obtain separate population figures for those counties inside Section 5 jurisdictions versus those outside, a dummy variable was created so that covered jurisdictions = 1, and non-covered jurisdictions = 0. The Civil Rights Division's webpage provided the listing of covered jurisdictions.¹ Another variable representing all minorities was calculated by adding together the major minority groups in the census data plus those who indicated more than one race.² One last variable was created to produce an inclusive Black population category consisting of Black(NH) alone and those persons reporting two races, *i.e.*, Black(NH) and White(NH). Similarly, Census 2000 redistricting data for the 12 covered townships in Michigan and New Hampshire were obtained and processed, then subtracted from non-covered totals and added to the covered totals.

Results

6. The following population counts and proportions were obtained as described above:

1. See http://www.justice.gov/crt/about/vot/sec_5/covered.php.

2. "All minorities" derived from the following categories found in Table PL2: Hispanic, Black(NH) alone, Asian(NH) alone, American Indian/Native Alaskan(NH) alone, Native Hawaiian/Other Pacific Islander(NH) alone, some other race alone, and population of two or more races.

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	Total Popula- tion	White (NH) Alone	Black (NH) Alone	Black (NH) plus Biracial*	All Minor- ities
United States	281,422	194,553	33,948	34,645	86,869
Covered Juris- dictions	67,588	39,334	13,592	13,725	28,254
Non- covered Juris- dictions	213,834	155,219	20,356	20,920	58,615

Data Source: Census 2000, PL 94-171 dataset, table PL2
Data expressed in 1000s

*** Biracial:** Black(NH) and White(NH)

a. proportion of Black(NH) Alone in Section 5 covered jurisdictions = 40.0%

b. proportion of Black(NH) plus Biracial in Section 5 covered jurisdictions = 39.6%

c. proportion of All Minorities in Section 5 covered jurisdictions = 32.5%

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Summary

7. According to Census 2000 Redistricting Data, only 40% of non-Hispanic Blacks and 33% of all minorities reside within Section 5 covered jurisdictions.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of January, 2011.

/s/_____

Sarah Brinegar

**APPENDIX E — SUPPLEMENTAL
DECLARATION OF ROBERT S. BERMAN,
FILED IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA,
JANUARY 14, 2011**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SHELBY COUNTY, ALABAMA,

Plaintiff,

v.

**ERIC H. HOLDER, Jr., in his official capacity as
Attorney General of the United States,**

Defendant

**Civil Action No.
1:10-cv-00651-JDB**

Supplemental Declaration of Robert S. Berman

**I, Robert S. Berman, pursuant to 28 U.S.C. 1746,
declare as follows:**

- 1. I am an attorney who currently serves as a Deputy Chief in the Voting Section of the Civil Rights Division of the United States Department of Justice. I have supervisory responsibility for the administrative review of voting changes submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act**

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of 1965, 42 U.S.C. 1973c. I have been employed as an attorney in the Department of Justice for 32 years with over 20 years of service in the Voting Section.

2. I have personal knowledge of the information contained in this declaration based upon my review of relevant records maintained by the Department of Justice, as well as my professional experience with, and personal knowledge of, Department of Justice policies and procedures.

Bailout History

3. The Voting Rights Act of 1965 included a bailout provision that permitted jurisdictions covered by Section 4 to seek to terminate their coverage by bringing a declaratory judgment action in this court. Voting Rights Act of 1965, Pub. L. No. 89-110, § 4(a), 79 Stat. 438.
4. In 1982, Congress amended the bailout provision, substantially expanding the opportunity for covered jurisdictions to terminate coverage. Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, § 2(b)(2), 96 Stat. 131. The new bailout standard became effective on August 5, 1984. *Ibid.*
5. In *Northwest Austin Mun. Util. Dist. No. One v. Holder*, 129 S. Ct. 2504, 2514 (2009), the Supreme Court adopted a still “broader reading of the bailout provision.” The Court’s reading permits covered subjurisdictions,

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rather than covered counties and states exclusively, to petition for bailout from Section 4 coverage.

6. There were 23 bailout cases filed prior to August 5, 1984. Those cases are listed, in chronological order, in Attachment A.
7. There have been 21 bailout cases filed by political subdivisions since August 5, 1984, when the new bailout standard went into effect. The United States consented to bailout in each case. Those cases are listed, in chronological order, in Attachment A.

Current Bailout Investigations

8. The Voting Section is currently investigating numerous potential bailouts. Those bailout investigations were initiated after the jurisdictions involved contacted the Department of Justice.
9. Those bailout investigations span six states and involve a variety of types of governmental units.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th day of January 2011.

s/ _____
Robert S. Berman

*Appendix E***ATTACHMENT A****Bailout Cases Before August 5, 1984**

1. *Alaska v. United States*, No. 101-66 (D.D.C. Aug. 17, 1966) (U.S. consented to judgment) (state later partially re-covered based on new coverage determinations after 1970 VRA amendments, and fully re-covered based on new coverage determinations after 1975 VRA amendments);
2. *Apache County v. United States*, 256 F. Supp. 903 (D.D.C. 1966) (Apache, Coconino, and Navajo Counties) (Arizona) (U.S. consented to judgment) (counties later re-covered based on new coverage determinations after both 1970 and 1975 VRA amendments);
3. *Elmore County v. United States*, No. 320-66 (D.D.C. Sept. 22, 1966) (Idaho) (U.S. consented to judgment) (county later re-covered based on new coverage determinations after 1970 VRA amendments);
4. *Wake County v. United States*, No. 1198-66 (D.D.C. Jan. 23, 1967) (North Carolina) (U.S. consented to judgment);
5. *Gaston County v. United States*, 288 F. Supp. 678 (D.D.C. 1968), *affd*, 395 U.S. 285 (1969) (North Carolina) (bailout denied);
6. *Nash County v. United States*, No. 1702-66 (D.D.C. Sept. 26, 1969) (North Carolina) (county stipulated to dismissal in wake of Gaston County decision);

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7. *Alaska v. United States*, No. 2122-71 (D.D.C. Mar. 10, 1972) (election districts 8 (Anchorage), 11 (Kodiak), 12 (Aleutian islands), and 16 (Fairbanks-Fort Yukon)) (U.S. consented to judgment) (state later fully re-covered based on new coverage determinations after 1975 VRA amendments);
8. *New York v. United States*, No. 2419-71 (D.D.C. Apr. 13, 1972), *affd on other grounds sub nom. NAACP v. New York*, 413 U.S. 345 (1973) (Bronx, Kings, and New York Counties) (U.S. consented to judgment); termination of coverage rescinded (Orders of Jan. 10 and Apr. 30, 1974), *affd mem.* 419 U.S. 888 (1974) (counties re-covered by D.D.C. on motion of U.S. based on a finding in related case, *Torres v. Sachs*, 381 F. Supp. 309 (S.D.N.Y. 1974), that counties had used discriminatory test or device) (Bronx and Kings Counties were later covered a second time based on new coverage determinations after 1975 VRA amendments);
9. *Virginia v. United States*, 386 F. Supp. 1319 (D.D.C. 1974), *affd*, 420 U.S. 901 (1975) (bailout denied);
10. *Yuba County v. United States*, No. 75-2170 (D.D.C. May 25, 1976) (California) (Jurisdiction dismissed action);
11. *New Mexico v. United States*, No. 76-0067 (D.D.C. July 30, 1976) (Curry, McKinley, and Otero Counties) (U.S. consented to judgment);

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12. *Maine v. United States*, No. 75-2125 (D.D.C. Sept. 17, 1976) (Towns of Cadwell, Limestone, Ludlow, Nashville, Reed, Woodland, Connor, New Gloucester, Sullivan, Winter Harbor, Chelsea, Sommerville, Carroll, Charleston, Webster, Waldo, Beddington, and Cutler) (U.S. consented to judgment);
13. *El Paso County v. United States*, No. 77-0815 (D.D.C. Nov. 8, 1977) (Colorado) (Jurisdiction dismissed action);
14. *Choctaw and McCurtain Counties v. United States*, No. 76-1250 (D.D.C. May 12, 1978) (Oklahoma) (U.S. consented to judgment);
15. *Alaska v. United States*, No. 78-0484 (D.D.C. May 10, 1979) (Jurisdiction dismissed action);
16. *City of Rome v. United States*, 472 F. Supp. 221 (D.D.C. 1979), *affd*, 446 U.S. 156 (1980) (bailout denied);
17. *Campbell County v. United States*, No. 82-1862 (D.D.C. Dec. 17, 1982) (Wyoming) (U.S. consented to judgment);
18. *Massachusetts v. United States*, No. 83-0945 (D.D.C. Sept. 29, 1983) (Towns of Amherst, Ayer, Belchertown, Bourne, Harvard, Sandwich, Shirley, Sunderland, and Wrentham) (U.S. consented to judgment);
19. *Alaska v. United States*, No. 84-1362 (D.D.C. May 1, 1984) (Jurisdiction dismissed action);

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20. *Connecticut v. United States*, No. 83-3103 (D.D.C. June 21, 1984) (Towns of Groton, Mansfield, and Southbury) (U.S. consented to judgment);
21. *Board of County Commissioners v. United States*, No. 84-1626 (D.D.C. July 30, 1984) (El Paso County, Colorado) (U.S. consented to judgment);
22. *Waihee v. United States*, No. 84-1694 (D.D.C. July 31, 1984) (Honolulu County, Hawaii) (U.S. consented to judgment); and
23. *Idaho v. United States*, No. 82-1778 (D.D.C. July 31, 1984) (Elmore County) (U.S. consented to judgment).

Bailout Cases After August 5, 1984

1. *City of Fairfax v. Reno*, No. 97-02212 (D.D.C. Oct. 21, 1997) (including the City of Fairfax School Board) (Virginia) (U.S. consented to judgment);
2. *Frederick County v. Reno*, No. 99-00941 (D.D.C. Sept. 10, 1999) (including the Frederick County School Board; the Towns of Middletown and Stephens City; and the Frederick County Shawneeland Sanitary District) (Virginia) (U.S. consented to judgment);
3. *Shenandoah County v. Reno*, No. 99-00992 (D.D.C. Oct. 15, 1999) (including the Shenandoah County School Board; the Towns of Edinburg, Mount Jackson, New Market, Strasburg, Toms Brook, and Woodstock; the Stoney Creek Sanitary District; and the Toms

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Brook-Maurertown Sanitary District) (Virginia) (U.S. consented to judgment);

4. ***Roanoke County v. Reno*, No. 00-01949 (D.D.C. Jan. 24, 2001) (including the Roanoke County School Board and the Town of Vinton) (Virginia) (U.S. consented to judgment);**
5. ***City of Winchester v. Reno*, No. 00-03073 (D.D.C. June 1, 2001) (Virginia) (U.S. consented to judgment);**
6. ***City of Harrisonburg v. Reno*, No. 02-00289 (D.D.C. Apr. 17, 2002) (including the Harrisonburg City School Board) (Virginia) (U.S. consented to judgment);**
7. ***Rockingham County v. Reno*, No. 02-00391 (D.D.C. May 24, 2002) (including the Rockingham County School Board and the Towns of Bridgewater, Broadway, Dayton, Elkton, Grottoes, Mt. Crawford, and Timberville) (Virginia) (U.S. consented to judgment);**
8. ***Warren County v. Ashcroft*, No. 02-01736 (D.D.C. Nov. 26, 2002) (including the Warren County School Board and the Town of Front Royal) (Virginia) (U.S. consented to judgment);**
9. ***Greene County v. Ashcroft*, No. 03-01877 (D.D.C. Jan. 19, 2004) (including the Greene County School Board and the Town of Standardville) (Virginia) (U.S. consented to judgment);**

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10. *Pulaski County v. Gonzales*, No. 05-01265 (D.D.C. Sept. 27, 2005) (including the Pulaski County School Board and the Towns of Pulaski and Dublin) (Virginia) (U.S. consented to judgment);
11. *Augusta County v. Gonzales*, No. 05-01885 (D.D.C. Nov. 30, 2005) (including the Augusta County School Board and the Town of Craigsville) (Virginia) (U.S. consented to judgment);
12. *City of Salem v. Gonzales*, No. 06-00977 (D.D.C. July 27, 2006) (Virginia) (U.S. consented to judgment);
13. *Botetourt County v. Gonzales*, No. 06-01052 (D.D.C. Aug. 28, 2006) (including the Botetourt County School Board and the Towns of Buchanan, Fincastle, and Troutville) (Virginia) (U.S. consented to judgment);
14. *Essex County v. Gonzales*, No. 06-01631 (D.D.C. Jan. 31, 2007) (including the Essex County School Board and the Town of Tappahannock) (Virginia) (U.S. consented to judgment);
15. *Middlesex County v. Gonzales*, No. 07-01485 (D.D.C. Jan. 7, 2008) (including the Middlesex County School Board and the Town of Urbanna) (Virginia) (U.S. consented to judgment);
16. *Amherst County v. Mukasey*, No. 08-00780 (D.D.C. Aug. 13, 2008) (including the Town of Amherst) (Virginia) (U.S. consented to judgment);

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17. *Page County v. Mukasey*, No. 08-01113 (D.D.C. Sept. 15, 2008) (including the Page County School Board and the Towns of Luray, Stanley, and Shenandoah) (Virginia) (U.S. consented to judgment);
18. *Washington County v. Mukasey*, No. 08-01112 (D.D.C. Sept. 23, 2008) (including the Washington County School Board and the Towns of Abington, Damascus, and Glade Spring) (Virginia) (U.S. consented to judgment);
19. *Northwest Austin Municipal Utility District Number One v. Mukasey*, No. 06-01384 (D.D.C. Nov. 3, 2009) (Texas) (U.S. opposed on ground that jurisdiction was not a political subdivision and bailout was denied on that ground by D.D.C. on May 30, 2008. On appeal, the Supreme Court reversed on that ground on June 22, 2009, and held that the jurisdiction was a political subdivision. On remand, the U.S. consented to judgment.);
20. *City of Kings Mountain v. Holder*, No. 10-01153 (D.D.C. Oct. 22, 2010) (North Carolina) (U.S. consented to judgment); and
21. *City of Sandy Springs v. Holder*, No. 10-01502 (D.D.C. Oct. 26, 2010) (Georgia) (U.S. consented to judgment).

**APPENDIX F — SECOND SUPPLEMENTAL
DECLARATION OF ROBERT S. BERMAN,
FILED IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA,
FEBRUARY 16, 2011**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 1:10-cv-00651-JDB

SHELBY COUNTY, ALABAMA,

Plaintiff,

v.

**ERIC H. HOLDER, Jr., in his official capacity as
Attorney General of the United States,**

Defendant.

**SECOND SUPPLEMENTAL DECLARATION OF
ROBERT S. BERMAN**

I, Robert S. Berman, pursuant to 28 U.S.C. 1746,
declare as follows:

1. I am an attorney who currently serves as a Deputy Chief in the Voting Section of the Civil Rights Division of the United States Department of Justice. I have supervisory responsibility for the administrative review of voting changes submitted to the Attorney

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General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. I have been employed as an attorney in the Department of Justice for 32 years with over 20 years of service in the Voting Section.

2. I have personal knowledge of the information contained in this declaration based upon my review of relevant records maintained by the Department of Justice, as well as my professional experience with, and personal knowledge of, Department of Justice policies and procedures.
3. The following is a list of cases where a court entered an order granting relief pursuant to Section 3(c) of the Voting Rights Act, 42 U.S.C. 1973a(c):
 - a. *United States v. Thurston County*, C.A. No. 78-0-380 (D. Neb. May 9, 1979)
 - b. *McMillan v. Escambia County*, C.A. No. 77-0432 (N.D. Fla. Dec. 3, 1979)
 - c. *Woodring v. Clarke*, C.A. No. 80-4569 (S.D. Ill. Oct. 31, 1983)
 - d. *Sanchez v. Anaya*, C.A. No. 82-0067M (D.N.M. Dec. 17, 1984)
 - e. *United States v. McKinley County*, No. 86-0029-C (D.N.M. Jan. 13, 1986)
 - f. *United States v. Sandoval County*, C.A. No. 88-1457-SC (D.N.M. filed Dec. 5, 1988)

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- g. *Brown v. Board of Commissioners of the City of Chattanooga*, No. CIV-1-87-388 (E.D. Tenn. Jan. 11, 1990)
- h. *Cuthair v. Montezuma-Cortez School District Number RE-1*, No. 89-C-964 (D.Col. Apr. 9, 1990). *See also* 7 F. Supp. 2d 1152 (D. Colo. 1998)
- i. *Jeffers v. Clinton*, 740 F. Supp. 585 (E.D. Ark. 1990), *appeal dismissed*, 498 U.S. 1129 (1991)
- j. *Garza and United States v. Los Angeles County*, C.A. Nos. CV 88-5143 KN (Ex) and CV 88-5435 KN (Ex) (C.D. Cal. Apr. 26, 1991)
- k. *United States v. Cibola County*, C.A. No. 93-1134-LH/LFG (D.N.M. filed Oct. 22, 1993)
- l. *United States v. Socorro County*, C.A. No. 93-1244-JP (D.N.M. filed Oct. 22, 1993)
- m. *United States v. Alameda County*, C.A. No. C 95-1266 (SAW) (N.D. Cal. filed Apr. 13, 1995)
- n. *United States v. Bernalillo County*, C.A. No. 93-156-BB/LCS (D.N.M. filed Feb. 26, 1998)
- o. *Kirke v. Buffalo County*, C.A. No. 03-CV-3011 (D.S.D. filed Mar. 20, 2003)

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- p. *Blackmoon v. Charles Mix County*, C.A. No. 05-CV-4017 (D.S.D. filed Jan. 27, 2005)
- q. *United States v. Village of Port Chester*, C.A. No. 06-CV-15173 (S.D.N.Y. filed Dec. 15, 2006)

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of February 2011.

/s/
Robert S. Berman

**APPENDIX G — SUPPLEMENTAL
DECLARATION OF DR. PEYTON MCCRARY,
FILED IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA,
FEBRUARY 16, 2011**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SHELBY COUNTY, ALABAMA,

Plaintiff,

v.

**ERIC H. HOLDER, Jr., in his official capacity
as Attorney General of the United States,**

Defendant

Civil Action No. 1:10-cv-00651-JDB

**SUPPLEMENTAL DECLARATION OF
DR. PEYTON MCCRARY**

Pursuant to 28 U.S.C. 1746, I, Peyton McCrary, make the following declaration:

1. My name is Peyton McCrary, and I reside in Arlington, Virginia. I am an historian employed since August, 1990, by the Voting Section, Civil Rights Division, of the Department of Justice. My responsibilities include the planning, direction, coordination, or performance of historical research or statistical analysis in connection with litigation. On occasion I am asked to provide written or courtroom testimony on behalf of the United States.

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2. My initial declaration in this case was filed November 15, 2010. I incorporate by reference the summary of professional qualifications provided in that declaration, including the attached *Curriculum Vitae*, which I prepared and know to be accurate.

3. In this court's Minute Order dated February 4, 2011, the parties were directed to brief the following question: "in considering the reauthorization of Section 5 of the Voting Rights Act in 2006, was it 'rational in both practice and theory,' *South Carolina v. Katzenbach*, 383 U.S. 301, 330 (1966), for Congress to preserve the existing coverage formula in Section 4(b) of the Act?" As a result, attorneys for the Department of Justice have asked me to clarify certain empirical facts regarding the course of Section 2 litigation that were part of the record before Congress in 2005-2006. Because Section 2 litigation is nationwide and not restricted to jurisdictions covered by Section 5, it offers a means of comparing racial discrimination affecting voting in covered with non-covered jurisdictions.

4. In my initial declaration I documented two key characteristics of Section 2 litigation: 1) the volume of cases settled in favor of minority plaintiffs was substantially larger in unreported cases than in cases with reported decisions; and 2) the volume of cases settled in favor of minority plaintiffs in both reported and unreported cases was substantially larger in jurisdictions covered by Section 5 than in non-covered jurisdictions. In that declaration I also documented that this pattern was evident in the record before Congress when it reauthorized Section 5 in 2006.

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5. In this supplemental declaration I have broken these data into separate patterns by state and, within partially covered states, I have separated the findings for covered and non-covered counties. The purpose is to provide empirical evidence – from the record before Congress in 2006 – concerning the issues posed by the court’s order.

6. Table 1 provides the number of reported Section 2 cases with outcomes favorable to minority plaintiffs in states that are entirely covered by the formula set forth in Section 4(b) of the Voting Rights Act. These data are taken from Ellen Katz, et al., *Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982* (2005), reprinted in *To Examine Impact and Effectiveness of the Voting Rights Act: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 16, 964-1124 (2005), and finalized as published at 39 U. Mich. J.L. Reform 643 (2006). I have used the numbers from the finalized database. Table 1 also identifies for each of the covered states the number of favorable outcomes in unreported Section 2 cases, taken from Nat’l Comm’n on the Voting Rights Act, *Protecting Minority Voters: The Voting Rights Act at Work, 1982-2005* (2006), reprinted in *Voting Rights Act: Evidence of Continuing Need: Hearing Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary*, 109th Cong. 104-289 (2006).¹

1. In its analysis the National Commission report utilized a version of the Michigan study directed by Professor Katz – known as the Voting Rights Initiative (VRI) – available on the VRI website as of Jan. 16, 2006. Thus the numbers in Table 5 of the National Commission report drawn from the Michigan

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Table 1 does *not* consider the pattern for covered jurisdictions in partially covered states, which is examined separately below.

Table 1: State-by-state Pattern of Section 2 Outcomes in States Entirely Covered by Section 5

Jurisdictions	Section 2 Cases With Outcomes Favorable to Minority Plaintiffs (Reported)	Section 2 Cases With Outcomes Favorable to Minority Plaintiffs (Reported & Unreported)
Covered States		
Alabama	12	192
Alaska	0	0
Arizona	0	2
Georgia	3	69
Louisiana	10	17
Mississippi	18	67

study differ slightly from both the numbers on the record before Congress and the finally published version cited in the text above. In this supplemental declaration I have relied on the numbers for partially covered states from the finalized Michigan database – the only version available electronically – and the number of outcomes in unreported cases listed in Table 5 of the National Commission report. The slight differences in the numbers reported in different versions of the Michigan study do not affect the conclusions to be drawn from the data.

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South Carolina	3	33
Texas	7	206
Virginia	4	15
<i>Total (covered states)</i>	<i>57</i>	<i>601</i>

7. Table 2 (see next page) relies on the Michigan study once again for outcomes in reported cases in non-covered states. The numbers for outcomes in unreported cases in non-covered states are taken from Attachment B to my initial Declaration of November 15, 2010, relying in part on summaries of cases in the record before Congress (cited in my initial declaration).

8. As the data in Tables 1 and 2 make clear, looking only at liability findings of a Section 2 violation gives a skewed picture of Section 2 litigation. In states entirely covered by Section 5 (see Table 1) the 57 favorable outcomes in reported decisions represented only 9.5% of the total outcomes (601) in both reported and unreported cases. For Alabama, reported decisions account for only 6.3% of the total favorable outcomes.

9. The data reported in Table 2 below also reflect a disparity between reported and unreported cases. The number of favorable outcomes in reported cases (38) represents 41.3% of total outcomes (92).

10. A comparison of the data in Tables 1 and 2 makes clear that minority plaintiffs brought many more successful Section 2 cases in covered states than in non-covered states. Looking just at reported cases, covered states accounted for 57 favorable outcomes and

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non-covered states for only 38. Looking at the total of both reported and unreported cases, the disparity was much greater: states covered by Section 5 accounted for 601 Section 2 cases with favorable outcomes to minority plaintiffs -- *more than six times* the 92 favorable outcomes in non-covered states.

Table 2: State-by-State Pattern of Section 2 Outcomes in States Not Covered by Section 5

Jurisdictions	Section 2 Cases With Outcomes Favorable to Minority Plaintiffs (Reported)	Section 2 Cases With Outcomes Favorable to Minority Plaintiffs (Reported & Unreported)
Non-Covered States		
Arkansas	4	28
Colorado	2	3
Connecticut	1	2
Delaware	1	1
Hawaii	1	1
Idaho	0	0
Indiana	1	4
Iowa	0	0
Illinois	9	11
Kansas	0	0
Kentucky	0	0

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Maine	0	0
Maryland	2	5
Massachusetts	1	3
Minnesota	0	0
Missouri	1	2
Montana	2	5
Nebraska	1	1
Nevada	0	0
New Jersey	1	2
New Mexico	0	7
North Dakota	0	1
Ohio	2	2
Oklahoma	0	0
Oregon	0	0
Pennsylvania	3	4
Rhode Island	1	2
Tennessee	4	6
Utah	0	1
Vermont	0	0
Washington	0	0
West Virginia	0	0
Wisconsin	1	1
Wyoming	0	0
Total (non-covered states)	38	92

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11. The pattern in states only partially covered by the formula in Section 4(b) is more complex. Only one of the partially covered states contains more than a handful of covered jurisdictions: North Carolina. Forty of North Carolina's 100 counties are subject to Section 5 review. According to the 2000 Census, these covered counties contain only 36.2% of the state's population.² Looking at reported decisions, six of the 10 favorable outcomes (60%) were in covered counties. The disparity is even greater when examining all Section 2 cases, both reported and unreported; 36 of 55 favorable outcomes (65.5%) occurred in covered counties.³ Thus the pattern of Section 2 litigation in North Carolina is similar to that when comparing covered and non-covered states.

2. These and all references to the population of jurisdictions are taken from Census 2000, Summary File 1, Table P1.

3. See the case summaries for North Carolina in *Voting Rights Act: Evidence of Continuing Need: Hearing Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary*, 109th Cong. 923-33, 937-42, 944, 947, 951-60, 1769-77, 1779, 1781-95, 1797-98, 1800-02 (2006) [hereinafter *Evidence of Continuing Need*].

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Jurisdictions	Section 2 Cases With Outcomes Favorable to Minority Plaintiffs (Reported)	Section 2 Cases With Outcomes Favorable to Minority Plaintiffs (Reported & Unreported)
North Carolina (40 covered)	6	36
(60 non-covered counties)	4	19

12. To compare Section 2 litigation in California's four covered counties with outcomes in the state's other 54 counties is not particularly informative; non-covered California counties contain 97.6% of the state's population and thus dwarf the number of people in areas covered by Section 5. Not surprisingly, the number of favorable outcomes in the rest of the state (15) is much greater than in the four covered counties (1).⁴

4. See Declaration of Dr. Peyton McCrary, November 15, 2010, Attachment B.

Appendix G

Jurisdictions	Section 2 Cases With Outcomes Favorable to Minority Plaintiffs (Reported)	Section 2 Cases With Outcomes Favorable to Minority Plaintiffs (Reported & Unreported)
California (4 covered counties)	0	1
(54 non-covered counties)	3	15

13. Similarly, only 5 of Florida's 67 counties are subject to Section 5 review and account for only one of eighteen favorable outcomes.⁵ These counties contain only 8.7% of the state's population. Only three of New York's 62 counties are covered, but they contain 28.1% of the state's population. The covered counties account for four of the seven favorable outcomes, however.⁶ In South Dakota only two of 66 counties are covered, containing 2.7% of the state's population; they account for one of the four outcomes favorable to minority plaintiffs.⁷

5. *Evidence of Continuing Need*, 477-81, 491-92, 498-502, 1482 n. 137, 1484-85; Declaration of Dr. Peyton McCrary, November 15, 2010, Attachment B.

6. *Evidence of Continuing Need*, 1837, 1855-56, 1874-75, 1878; Declaration of Dr. Peyton McCrary, November 15, 2010, Attachment B.

7. *Evidence of Continuing Need*, 1161-63, 1171-73; Declaration of Dr. Peyton McCrary, November 15, 2010, Attachment B.

Appendix G

Jurisdictions	Section 2 Cases With Outcomes Favorable to Minority Plaintiffs (Reported)	Section 2 Cases With Outcomes Favorable to Minority Plaintiffs (Reported & Unreported)
Florida (5 covered counties)	1	1
(62 non-covered counties)	6	17
New York (3 covered counties)	1	4
(59 non-covered counties)	4	7
South Dakota (2 covered counties)	1	1
(64 non-covered counties)	0	4

14. In Michigan only two townships (out of 1242) are covered under the formula in Section 4(b), and in New Hampshire only 10 towns (out of 246) are covered. The covered townships include less than one percent of Michigan's population. The covered towns in New Hampshire contain less than two percent of that state's population. Neither state has had any successful Section 2 litigation, either in covered or non-covered jurisdictions.

Appendix G

15. Pairing individual states – covered vs. non-covered states – can present a misleading view of the pattern of Section 2 outcomes, especially if one looks only at reported decisions. Illinois, for example, accounts for nine favorable outcomes in reported decisions – more than several states entirely covered by Section 5. When examining unreported as well as reported cases, however, all of the covered states except one (Arizona) have more favorable outcomes than the 11 in Illinois (comparing Tables 1 and 2). Georgia and South Carolina have three favorable outcomes apiece in reported cases – fewer than Arkansas, Tennessee, and Illinois. Looking at unreported as well as reported cases, however, reveals that Georgia has 69 favorable outcomes and South Carolina, 33, more than the 28 in Arkansas and far more than any other non-covered state.

16. In short, examining the pattern of outcomes in Section 2 litigation broken down by state – and by county within partially covered states – reinforces the assessment that the coverage formula set forth in Section 4(b) of the Voting Rights Act targets those areas of the country where racial discrimination affecting voting is most concentrated.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of February, 2011.

/s/_____
Peyton McCrary