

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

MARCUS CASTER, LAKEISHA
CHESTNUT, BOBBY LEE DUBOSE,
BENJAMIN JONES, RODNEY ALLEN
LOVE, MANASSEH POWELL,
RONALD SMITH, and WENDELL
THOMAS,

Plaintiffs,

v.

JOHN H. MERRILL, in his official
capacity as Alabama Secretary of State,

Defendant,

and

CHRIS PRINGLE and JIM
McCLENDON,

Intervenor-
Defendants.

Case No. 2:21-CV-1536-AMM

***CASTER PLAINTIFFS' BRIEF IN RESPONSE TO SPECIAL MASTERS'
REPORT AND RECOMMENDATION***

I. Introduction

For almost two years, Plaintiffs have fought to vindicate the Voting Rights Act in Alabama. The Special Master's carefully supported and tightly reasoned report and recommendation ensures that fight will not be in vain. The Special Master's Remedial Plans 1 and 3 fully remedy Alabama's likely Section 2 violation and faithfully comport with this Court's remedial instructions. The Special Master's Remedial Plan 2, however, does not reliably provide Black voters an additional district in which they have an opportunity to elect a candidate of their choice, especially in the most recent elections analyzed. For these reasons, Plaintiffs urge the Court to adopt Remedial Plans 1 or 3.

II. Remedial Plans 1 and 3

The Court should adopt Remedial Plans 1 or 3 because they fully remedy the State's likely Section 2 violation and otherwise comply with this Court's instructions.

First, Remedial Plans 1 and 3 undeniably provide Black voters in Alabama an additional district in which they have an opportunity to elect a candidate of their choice. The Special Master analyzed the performance of his Remedial Plans using 17 distinct election contests. Report at 30. His analysis showed that the Black-preferred candidate would have won election in 15 out of 17 contests in Remedial Plan 1's CD-2 and 16 out of 17 contests in Remedial Plan 3's CD-2. *Id.* at 31. And

in both Plans, the Black-preferred candidate would have won election in 17 out of 17 contests in CD-7. *Id.* By any measure, Remedial Plans 1 and 3 cure Alabama's likely Section Two violation.

Second, Remedial Plans 1 and 3 comply with traditional redistricting criteria and mirror the State's 2023 Plan to the extent permissible under the VRA. The Plans have equal population, are contiguous, and have compactness scores and boundary splits that are roughly equivalent to the State's 2021 and 2023 Plans. *Id.* at 34-42. And Remedial Plans 1 and 3 both retain a significant majority of the state's population in the same districts in which they were located in the 2023 Plan. *Id.* at 26-28

Remedial Plans 1 and 3, in other words, comply with this Court's orders, remedy Alabama's likely Section 2 violation, and in the process respect both traditional redistricting criteria and the State's own line-drawing decisions. The Court, Plaintiffs, and Alabama would be well served by either Plan.

III. Special Master's Remedial Plan 2

While Remedial Plans 1 and 3 indisputably comply with this Court's orders, the additional opportunity afforded Black voters in Remedial Plan 2 is far less certain. Black-preferred candidates would have won fewer elections overall in Remedial Plan 2's CD-2, *id.* at 31, and only one out of five of the 2022 elections the Special Master analyzed. Index at 27. In other words, the Black-preferred candidate

would have lost 80% of the most recent elections, casting significant doubt on whether Remedial Plan 2's CD-2 would provide a meaningful opportunity district for Black voters in future elections. By contrast, CD-2 in Remedial Plans 1 and 3 performed for Black-preferred candidates in 2022 elections 60% or 80% of the time. *Id.* at 5, 48. Because Remedial Plan 2 does not outperform Remedial Plans 1 and 3 on traditional redistricting criteria or on any other instruction this Court provided to the Special Master, Report at 26-28, 34-42, Remedial Plan 2 serves no interest not already captured in the other proposals. As a result, Remedial Plans 1 and 3 are superior options.

IV. Conclusion

Because Remedial Plans 1 and 3 leave no doubt that they comply with this Court's orders, and because Remedial Plan 2 does not with certainty cure Alabama's Section 2 violation or outperform Plans 1 and 3 on any other metric, the Court should adopt Remedial Plan 1 or 3.

Respectfully submitted this 28th day of September 2023.

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**Admitted Pro Hac Vice*