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October 25, 2021

Sent via email

Madison County Commission
Dale W. Strong, Chair
Courthouse 700, 100 North Side Square
Huntsville, AL 35801
strongalabama@att.net

Dear Chair Strong and Members of the Madison County Commission:

The NAACP Legal Defense and Educational Fund, Inc. ("LDF"),[1] the Alabama State Conference of the NAACP, and the Huntsville-Madison County Branch of the NAACP write to follow up on our letter of January 22, 2019,[2] regarding the Madison County Commission's unmet obligations under Section 2 of the Voting Rights Act of 1965 ("Section 2"), and our subsequent discussions with the Commission's counsel. As we have explained in detail, the Commission's current districting plan, with its combination of six single-member districts and one at-large position, likely violates Section 2, because it fails to provide Black voters with an equal opportunity to elect candidates of their choice. Specifically, the Commission's structure allows Black voters—who are approximately one fourth of the County's voting-age population—a meaningful opportunity to elect their preferred candidates to only one of the Commission's seven seats. Now that redistricting is underway based on 2020 Census data, we write to re-urge that the County develop an electoral structure for the Commission that complies with the U.S. Constitution's equal population mandate and ban on racial discrimination in redistricting, as well as Section 2's protections against racially discriminatory vote dilution. In addition, we request that the Commission publicize its redistricting schedule and provide information on opportunities for public participation. We reiterate our offer to assist the Commission in developing an electoral structure that complies with the U.S. Constitution and the Voting Rights Act, and to provide such assistance in a form consistent with any public participation rules or guidelines that may apply.

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[1] Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression. LDF has been fully separate from the National Association for the Advancement of Colored People ("NAACP") since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.

[2] Letter from Deuel Ross, NAACP Legal Def. and Educ. Fund, Inc., et al., to Dale W. Strong, Chair, Madison Cty. Comm. (Jan. 22, 2019), https://www.naacpldf.org/wp-content/uploads/Ltr-to-Madison-Cty-Cmmn.pdf (enclosed herewith for ease of reference).

As a first step, we request a response in writing from the Commission by 5:00 p.m. on Monday, November 1, explaining whether, and how, the Commission plans to address the Section 2 compliance issues we have identified, and how interested members of the public may participate in this process and provide feedback and input. We welcome renewed discussions with the Commission's counsel on these matters.

As described in detail in our previous letter, which is enclosed for ease of reference, the Commission's current districting structure appears to dilute Black voting strength. As you know, the Commission uses a "6-1" or "mixed" plan, in which six commissioners are elected from single-member districts and a seventh commissioner, designated the Commission's chair, is elected at-large by voters countywide. Despite constituting approximately 25% of Madison County's voting-age population,[3] however, the Commission's current districting plan has been drawn such that Black voters have the opportunity to participate in the political process on an equal basis and elect a candidate of their choice to only one of the Commission's seven seats, District 6. If the at-large position were eliminated and all seven commissioners were elected from single-member districts, Black voters could form the majority in a second district, enabling the potential election of a second candidate preferred by Black voters. As our previous letter points out, it may be possible to draw a second majority-Black district even under the current 6-1 plan by unpacking District 6. Based on 2020 Census Data, District 6's voting-age population is approximately 71% Black—far higher than compliance with the Voting Rights Act requires.[4] In short, the significant disparity between the size of Madison County's Black voting-age population and Black residents' representation on the Madison County Commission, along with the apparent packing of District 6, raises grave concerns under Section 2.[5]

As we explained in 2019, federal courts have repeatedly held that mixed districting plans that result in a dilution of Black electoral strength violate Section 2.[6] If the Commission's structure is challenged under Section 2, a similar result

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[3] U.S. Census Bureau, *2020 Decennial Census* (reporting that 74,617 of Madison County's 304,143 voting-age residents, or 24.53%, identify as "any-part Black").

[4] Our analysis of 2020 Census data indicates that 30,290 of District 6's 42,690 residents of voting age, or 70.95%, identify as any-part Black. *Cf. Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1168-69 (M.D. Ala. 2017) (finding that the reducing the Black population in a majority-minority state House district located in Madison County from 70% to 61% did not violate federal law).

[5] As we informed the Commission in 2019, a disparity between the "number of majority-minority voting districts and the minority group's share of the population" is probative of a Section 2 violation. *Johnson v. De Grandy*, 512 U.S. 997, 1025 (1994) (O'Connor, J., concurring); *see also Stabler v. Cty. of Thurston*, 129 F. 3d 1015, 1022 (8th Cir. 1997).

[6] *See*, *e.g.*, *United States v. Dallas Cty. Comm'n*, 850 F.2d 1433, 1439–40 (11th Cir. 1988) (rejecting a school board's proposed 4-1 remedial plan because it did not reflect Black voting strength in violation of Section 2); *Wright v. Sumter Cty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297, 1324 (M.D. Ga. 2018) (finding that a 5-2 plan violated Section 2 where half of the county's population was Black, but only two of the board's seven districts were comprised of a majority of Black voters); *United States v. Osceola Cty.*, 474 F. Supp. 2d 1254, 1256 (M.D. Fla. 2006) (rejecting a proposed 5-2

appears likely.[7] As our previous letter explained, expert evidence from the *Alabama Legislative Black Caucus* case and recent election returns show a high level of racial polarization in Madison County.[8] This factor, which "perpetuates the effects of past discrimination" and "allows those elected to ignore minority interest without fear of political consequences,"[9] has been described as "the keystone of a dilution case."[10] The presence of racially polarized voting patterns and the size and geographical compactness of Madison County's Black community satisfy the three legal preconditions for a Section 2 claim.[11] It is "only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances."[12] In addition, facts that are probative under Section 2's "totality of circumstances" analysis—including Madison County's history of official discrimination in voting, the socioeconomic disparities between Black and white residents that persist today as a result of this discrimination, the lack of electoral success by Black candidates for county-wide office, and the tenuousness of any justification for maintaining the "6-1" plan[13]—continue to support the conclusion that the Commission's structure, interacting with social and historical conditions in Madison County, cause an inequality of opportunity for Black voters to participate in the political process and elect candidates of choice.[14] As the Supreme Court has long made clear, such evidence constitutes "[t]he essence of a § 2 claim."

After we sent our 2019 letter, several of the present signatories had the opportunity to discuss these matters with the Commission's counsel. During these

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remedial plan because it violated Section 2); *see also Harper v. City of Chi. Heights*, 223 F. 3d 593, 600 (7th Cir. 2000) (affirming the district court's finding that an at-large plan violated Section 2); *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 718 (S.D. Tex. 2017) (finding that a 6-2 plan violated Section 2 because Latino voters made up half of the population, but held a majority in only three seats, i.e., "one district short of proportionality"); *Benavidez v. Irving Indep. Sch. Dist.*, No. 3:13-CV-0087-D, 2014 WL 4055366, at *23 (N.D. Tex. Aug. 15, 2014) (finding that a 5-2 plan violated Section 2); *Jamison v. Tupelo*, 471 F. Supp. 2d 706, 716 (N.D. Miss. 2007) (finding that a 7-2 plan violated Section 2).

[7] *See* Ross, et al., *supra* note 2, at 2-4.

[8] *Id.* at 2-3 & notes 11-12; Expert Report of Dr. Allen Lichtman, *Ala. Legis. Black Caucus v. Alabama*, No. 2:12-cv-00691 (M.D. Ala. 2012), Doc. 168-1 at 14; *see also S. Christian Leadership Conf. of Alabama v. Sessions*, 56 F.3d 1281, 1298-99 (11th Cir. 1995) ("Indeed, when considering vote dilution claims in Alabama, federal courts have always found racially polarized voting.").

[9] *Dillard v. Baldwin Cty. Bd. of Educ.*, 686 F. Supp. 1459, 1463 (M.D. Ala. 1988); *see also Gingles*, 478 U.S. at 48 n.15; *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994) (explaining that racially polarized voting increases the potential for discrimination in redistricting, because "manipulation of district lines can dilute the voting strength of politically cohesive minority group members").

[10] *United States v. Marengo Cty. Comm'n*, 731 F.2d 1546, 1566 (11th Cir. 1984).

[11] *See Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). These three considerations are often referred to in Section 2 litigation as the "*Gingles* preconditions."

[12] *Georgia State Conf. of NAACP v. Fayette Cty. Bd. of Comm'rs*, 775 F.3d 1336, 1342 (11th Cir. 2015).

[13] *See* Ross, et al., *supra* note 2, at 3-4 & nn. 12-18.

[14] *See Gingles*, 478 U.S. at 47.

discussions, we explained our concerns and shared an illustrative plan—one of many potential remedies to the ongoing vote dilution— showing that two majority-Black commissioner districts can be developed. We also requested the opportunity to participate in Madison County's redistricting process after the release of 2020 Census data. These communications with the Commission's counsel were amicable, productive, and conducted in good faith. However, it is now September of 2021, redistricting in Alabama is well under way, and we have received no indication that the Commission is taking steps to address the Section 2 issues we identified.

The facts recited in our 2019 letter remain true today. Moreover, 2020 Census data shows that Madison County's Black population has grown at a faster rate than its white population over the last decade, contributing to the current plan's failure to provide equal access to representation and electoral participation for Black voters.[15] Accordingly, we reaffirm our position that a second majority-Black district is likely necessary to bring the Madison County Commission into compliance with Section 2 of the Voting Rights Act.

We also reiterate our willingness to work with the Commission in addressing this inequity. We are prepared to assist the Commission, consistent with public participation rules or guidelines, in developing an inclusive redistricting plan that complies with Section 2 and the U.S. Constitution, potentially avoiding costly and lengthy litigation.[16] **We request a response in writing from the Commission by 5:00 p.m. on Monday, November 1**, explaining whether the Commission intends to address the Section 2 issues we have identified, how the Commission proposes to do so, and when and how the public may participate in this process. The Commission's counsel should also feel free to contact Steven Lance at slance@naacpldf.org.

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[15] U.S. Census Bureau, *Alabama: 2020 Census* (Aug. 25, 2021), https://www.census.gov/library/stories/state-by-state/alabama-population-change-between-census-decade.html (reporting growth of 14.5% among Madison County residents identifying as "Black or African American alone" and growth of 19% among Madison County residents identifying as "Black or African American alone or in combination," as compared to growth of only 6.2% among Madison County residents identifying as "White alone").

[16] *See, e.g.*, Federal Judicial Center, *2003–2004 District Court Case-Weighting Study*, Table 1 (2005) (finding that voting cases consume the sixth most judicial resources); John E. Jones, *Appealing District Vote Wastes $1M*, CITIZEN (Dec. 2, 2014), http://thecitizen.com/articles/12-02-2014/appealing-district-vote-wastes-1m (noting that Fayette County, Georgia spent $1 million unsuccessfully fighting a Section 2 claim); NAACP Legal Def. and Educ. Fund, Inc., *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation* 3 (Sept. 19, 2021), https://www.naacpldf.org/wp-content/uploads/Section-2-costs-9.19.21-Final.pdf (noting that Charleston County, South Carolina, spent $2 million unsuccessfully defending a Section 2 lawsuit, only to spend an additional $712,027 following judgment for plaintiffs' attorneys fees and costs); *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. 92 (2005) ("Two to five years is a rough average" for the length of Section 2 lawsuits).

Sincerely,

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Enc.: Letter from Deuel Ross, LDF, et al., to Dale W. Strong, Chair, Madison County Commission (Jan. 22, 2019)

LDF
DEFEND EDUCATE EMPOWER

January 22, 2019

By Email and USPS mail

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Dear Chairman Strong:

The NAACP Legal Defense and Educational Fund, Inc. (LDF), Attorney Edward Still, the Alabama State Conference of the NAACP, and the Huntsville/Madison County Branch of the NAACP write to express our concerns about the system presently used to elect the seven members of the Madison County Commission ("Commission").[1] As you know, the Commission currently uses a "6-1" or "mixed" plan, in which six commissioners are elected from single-member districts and one commissioner is elected at-large by voters countywide. We have serious concerns that this 6-1 plan may violate Section 2 of the Voting Rights Act ("Section 2") because it limits the ability of Black voters to elect candidates of their choice and participate equally in the electoral process.[2]

Section 2 prohibits voting standards, practices, or procedures that either are enacted with racially discriminatory intent or have racially discriminatory results.[3] A chief purpose of Section 2 is to prohibit minority vote dilution, including the use of at-large elections that submerge Black voters into districts in which they are an ineffective minority of voters or the "packing" of Black voters into districts where they constitute an excessive majority.[4] These practices minimize Black voters' ability to elect their preferred candidates and influence the Commission's policy decisions.

Until 1988, all commissioners were elected through a "pure" at-large voting system. Under this at-large system, the votes of Black voters were canceled out by the white majority who voted as a bloc to defeat Black preferred candidates. A court order led to the adoption of the 6-1 plan to

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1 Since 1957, LDF has been a separate entity from the NAACP and its state and local branches. LDF, Mr. Still, and the NAACP have won numerous cases challenging discriminatory methods of election in Alabama and elsewhere. *See, e.g., Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395 (M.D. La. 2017) (LDF and the NAACP successfully challenging the at-large election of state court judges); *Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026 (M.D. Ala. 2017) (Mr. Still successfully challenging Alabama's packing of majority-minority legislative districts); *Ga. State Conf. of the NAACP v. Fayette Cty. Bd. of Comm'rs*, 118 F. Supp. 3d 1338 (N.D. Ga. 2015) (LDF and the NAACP successfully challenging a county commission's and school board's at-large elections); *Dillard v. Greensboro*, 956 F. Supp. 1576 (M.D. Ala. 1997) (LDF and Mr. Still successfully challenging at-large elections).

2 52 U.S.C. § 10301.

3 *Chisom v. Roemer*, 501 U.S. 380, 394 & n.21 (1991).

4 *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986).

bring the Commission into compliance with Section 2.[5] Unfortunately, given the subsequent growth of Madison County's Black population, the 6-1 plan is no longer sufficient to ensure that Black voters have an equal opportunity to elect their candidates of choice to the Commission.

The 6-1 plan packs Black voters into one of the six single-member districts while requiring the at-large election of the chairperson of the Commission. Under controlling law, in determining whether a plan violates Section 2, a court will first examine the three "*Gingles* preconditions": (1) whether the Black community in Madison County is sufficiently large and geographically compact to constitute a majority in an additional district; (2) whether Black voters are politically cohesive; and (3) whether bloc voting by white voters usually prevents Black voters from electing their preferred candidates in at-large elections or in majority-white districts in the County.[6] "[I]t will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances."[7]

The circumstances in Madison County satisfy all three *Gingles* preconditions.

First, while Black people are about 24% of Madison County's voting-age population,[8] Black voters constitute a majority in only one of the six single-member districts (District 6), while the seventh commissioner is elected at-large. This means that Black voters represent the majority of the electorate in only 14% of the Commission's districts (1 out of 7), an underrepresentation of 10%. This significant disproportionality is strong evidence that the 6-1 plan violates Section 2.[9] If the at-large chair were eliminated and all seven of the Commissioners were elected from single-member districts, the Commission could have a second district with a majority Black population.

District 6 is also "packed." Over 70% of District 6's voting-age population is Black. The Voting Rights Act does not require this packing.[10] Even under the current 6-1 plan, the Commission might still be able to add a second majority-minority district by unpacking District 6.

The existence of racially polarized voting in the County satisfies the remaining two *Gingles* preconditions.[11] Even as Black voters have supported Black candidates (demonstrating Black voter

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5 Order, *Grayson v. Madison Cty.*, No. 84-V-5770 (N.D. Ala. Jun. 2, 1988); *see also* Ala. Code § 11-3-1(c).

6 *Gingles*, 478 U.S. at 50-51.

7 *Ga. State Conf. of NAACP v. Fayette Cty. Bd. of Comm'rs*, 775 F.3d 1336, 1342 (11th Cir. 2015).

8 *2010 Census, Voting Age Population by Race*, U.S. Census Bureau.

9 A disparity between the "number of majority-minority voting districts and the minority group's share of the relevant population" is probative of a Section 2 violation. *Johnson v. De Grandy*, 512 U.S. 997, 1025 (1994) (O'Connor, J., concurring); *see also Stabler v. County of Thurston*, 129 F. 3d 1015, 1022 (8th Cir. 1997).

10 *Cf. Ala. Legis. Black Caucus*, 231 F. Supp. 3d at 1168-69 (finding that the reduction of the Black population in a majority-minority state House district located in Madison County from 70% to 61% did not violate federal law).

11 Racially polarized voting occurs when different racial groups vote for different candidates. In a racially polarized election, Black people vote together for their preferred (usually Black) candidate, and most white voters vote for the opposing (usually white) candidate. Racially polarized voting is pervasive in Alabama. *See Ala. Legis.*

cohesion), Black candidates have lost recent general elections against white people for at-large countywide positions and from single-member districts in which white voters are in the majority (indicating that white voters tend to vote against Black voters' preferred candidates).[12] To date, the only Black commissioners have been elected from the majority-minority District 6.[13] This suggests that the 6-1 plan and racially polarized voting are diluting the votes of Black people.

Where, as here, the *Gingles* preconditions are satisfied, a court would then examine the nine "Senate Factors" to decide whether the "totality of the circumstances" also demonstrate that the 6-1 plan is racially discriminatory.[14] Here, the Senate Factors support the conclusion that the 6-1 plan violates Section 2. As described above, the County's history of discrimination in voting, the existence of racially polarized voting, and the lack of Black candidates' success in countywide elections or on the Commission outside of District 6 satisfy the first, second, and seventh factors.

The Commission's use of at-large elections and the long history of racial discrimination in education in both Madison County and Huntsville satisfy the third and fifth Senate Factors, respectively. For example, since the 1960s, the Madison County Board of Education has been subject to a school desegregation order because it has yet to address the vestiges of racial discrimination in its schools. And, as recently as 2018, the Commission was actively involved in important decisions impacting the desegregation order, including the siting of a new high school.[15]

Black Caucus v. Alabama, 135 S. Ct. 1257, 1273 (2015); *United States. v. McGregor*, 824 F. Supp. 2d 1339, 1346 & n.3 (M.D. Ala. 2011).

[12] For example, evidence submitted in the *Alabama Legislative Black Caucus* case showed extreme racial polarization in the 2008 and 2012 general elections. An expert found that, while 100% of Black voters in Madison County supported President Obama in 2008 and 2012, about 83% of white voters supported his white opponents. Expert Report of Dr. Allen Lichtman, *Ala. Legis. Black Caucus v. Alabama*, No. 2:12-cv-00691, Doc. 168-1 at 14. In 2018, Black candidates, Michael Walker, J.B. King and Deborah Barros, lost races for Madison County Probate Judge, State House District No. 10 and State Senate District No. 7, respectively, against white candidates. *Madison County Election Results, November 6, 2018,* https://results.enr.clarityelections.com/AL/Madison/92686/Web02.221448/#/

[13] The list of current members of the Commission is available at *County Elected Officials | Madison County,* https://www.madisoncountyal.gov/government/county-elected-officials (last visited Jan. 22, 2019).

Commissioner JesHenry Malone was appointed after the death of Commissioner Bob Harrison. Paul Gattis, *Gov. Ivey appoints police captain to Madison County Commission*, Alabama Media Group, Mar. 9, 2018, https://www.al.com/news/huntsville/index.ssf/2018/03/gov_ivey_appoints_police_capta.html. Because the Governor failed to appoint him in time for the 2018 elections, Commissioner Malone will not face an election until 2020.

[14] *Gingles*, 478 U.S. at 36-37. The Senate Factors are: (1) the extent of any history of discrimination related to voting; (2) the extent to which voting is racially polarized; (3) the extent to which Madison County uses voting practices that may enhance the opportunity for discrimination; (4) whether Black candidates have access to candidate slating processes; (5) the extent to which Black voters bear the effects of socioeconomic discrimination; (6) whether political campaigns have been characterized by overt or subtle racial appeals; (7) the extent to which Black people have been elected to public office; (8) whether elected officials are responsive to Black residents; and (9) whether the policy underlying the 6-1 plan scheme is tenuous. *Id*. at 36-37. However, "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." *Id*. at 45.

[15] Kristen Conner, *Madison County Schools agrees to sell former site of proposed Monrovia high school*, WHNT 19 (Dec. 11, 2018), https://whnt.com/2018/12/11/madison-county-schools-agrees-to-sell-former-site-of-proposed-monrovia-high-school/.

Black residents of Madison County bear the effects of this discrimination, which hinders their ability to participate effectively in the political process. For example, the U.S. Census's 2013-2017 American Community Survey shows that 44.3% of the County's white residents, but just 29.0% of Black residents had a bachelor's degree or higher education; and 13.1% of Black people, and only 6.8% of white people had not finished high school. The Black median family income per year ($50,489) is nearly half that of white families ($93,357). Further, 22% of Black families, but only 5.1% of white families lived below the poverty line in the last year. Among the working age population (ages 16 to 64), 10.2% of Black people and just 5.6% of white people are unemployed.[16]

Finally, under the ninth Senate Factor, any justification for the at-large commissioner is tenuous. Indeed, the Eleventh Circuit has twice affirmed findings that there is no meaningful distinction between a chair and an "associate" commissioner in Alabama and ruled against similar mixed plans that included a chair's at-large election where there was evidence of a Section 2 violation.[17] Most of the other county commissions that use single-member district systems do not elect their chairpersons at-large.[18] Rather, commissioners will elect a chair or rotate as the chair.

Accordingly, in circumstances like those present in Madison County, federal courts have repeatedly found that the use of mixed plans that dilute Black voting power violate Section 2.[19]

Thankfully, however, the Commission can independently act, with a simple majority vote, to unpack District 6 to ensure equal opportunities for Black voters,[20] and the Commission can ask the County's Legislative Delegation to pass a bill to switch to a seven single-member district plan.

We write to assist the Commission in pursuing these more inclusive options, and to help it to avoid the costly and lengthy litigation that may otherwise be needed to ensure the Commission's

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16 2013-2017 Am. Community Survey 5-Year Estimates, U.S. Census Bureau, http://factfinder.census.gov.

17 *See Dillard v. Crenshaw Cty.*, 831 F.2d 246, 253 (11th Cir. 1987) (affirming that a 4-1 plan, with the at-large election of a chair, violated Section 2), *on remand* 679 F. Supp. 1546 (M.D. Ala. 1988) (adopting a rotating chair); *United States v. Marengo Cty.*, 643 F. Supp. 232, 235-36 (S.D. Ala. 1986), *aff'd* 811 F.2d 610 (11th Cir. 1987) (same).

18 Jim Blacksher, et. al., *Voting Rights in Alabama: 1982-2006*, 17 S. Cal. Rev. L. & Soc. Just. 249, 264 (2008).

19 *See, e.g.*, *Harper v. City of Chicago Heights*, 223 F. 3d 593, 600 (7th Cir. 2000) (affirming the district court's finding that a 6-1 plan violated Section 2); *United States v. Dallas Cty., Ala. Com'n*, 850 F.2d 1433, 1439-40 (11th Cir. 1988) (rejecting a school board's proposed 4-1 remedial plan because it did not reflect Black voting strength in violation of Section 2); *Wright v. Sumter Cty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297, 1322 (M.D. Ga. 2018) (finding that a 5-2 plan violated Section 2 where half of the county's population was Black, but only two of the board's seven districts were majority-Black); *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 718 (S.D. Tex. 2017) (finding that a 6-2 plan violated Section 2 because Latinos made up half of the population, but held a majority in only three seats, i.e., "one district short of proportionality"); *Benavidez v. Irving Indep. Sch. Dist.*, No. 3:13-CV-0087-D, 2014 WL 4055366, at *23 (N.D. Tex. Aug. 15, 2014) (finding that a 5-2 plan violated Section 2); *Jamison v. Tupelo*, 471 F. Supp. 2d 706, 716 (N.D. Miss. 2007) (finding that a 7-2 plan violated Section 2); *United States v. Osceola Cty.*, 474 F. Supp. 2d 1254, 1256 (M.D. Fla. 2006) (rejecting a proposed 5-2 remedial plan because it violated Section 2).

20 *See* Ala. Code § 11-3-1.1(a) (permitting the Commission to alter the boundaries of the districts by resolution).

compliance with Section 2.[21] We urge the Commission to work with us and we would welcome the opportunity to meet with you in-person to amicably and quickly to resolve this important issue.

Please respond to us **in writing by Thursday January 31, 2019** with a proposed meeting date. Please also feel free to contact us by phone or email at any time.

Sincerely,

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[21] *See, e.g.*, Federal Judicial Center, *2003-2004 District Court Case-Weighting Study*, Table 1 (2005) (finding that voting cases consume the sixth most judicial resources); John E. Jones, *Appealing District Vote Wastes $1M*, THE CITIZEN (Dec. 2, 2014), *available at* http://thecitizen.com/articles/12-02-2014/appealing-district-vote-wastes-1m (noting that Fayette County, Georgia spent $1 million unsuccessfully fighting a Section 2 claim). *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. 92 (2005) ("Two to five years is a rough average" for the length of Section 2 lawsuits).