

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

**LINDA STOUT, et al.,** )  
 )  
 **Plaintiffs,** )  
 )  
 **UNITED STATES OF AMERICA,** )  
 )  
 **Plaintiff-Intervenor,** )  
 )  
 **v.** )  
 )  
 **JEFFERSON COUNTY BOARD OF** )  
 **EDUCATION, et al.,** )  
 )  
 **Defendants,** )  
 )  
 **GARDENDALE CITY BOARD OF** )  
 **EDUCATION,** )  
 )  
 **Defendant-Intervenor.** )

**Case No.: 2:65-cv-00396-MHH**

**PLAINTIFFS’ CORRECTED OBJECTION TO MOTION TO OPERATE MUNICIPAL  
SCHOOL SYSTEM**

Plaintiffs Linda Stout, et al. (“Plaintiffs”) respectfully submit this objection to the Motion to Operate Municipal School System and Plan of Separation (Doc. 1040 and 1040-1), filed by Defendant-Intervenors, Gardendale Board of Education (“GBOE”) on December 12, 2015, pursuant to the Court’s amended scheduling order dated April 27, 2016 (Doc. 1070). In that motion, GBOE requested that this Court approve its plan to form and operate a school system separate from the one operated by the Defendant, Jefferson County Board of Education (“JCBOE”). Before it can obtain approval for that request, GBOE bears the burden of proving

that its separation plan would further compliance with the desegregation orders of this Court. Because GBOE has failed to satisfy that burden, this Court should deny its request for approval.

GBOE's separation request failed to satisfy its burden in three different respects. First, GBOE's proposed separation would further segregation and impede the ability of JCBOE to meet its constitutional desegregation obligations. If GBOE were allowed to separate, the segregative impact on JCBOE would add to the cumulative adverse impact of prior separations. GBOE's current attempt to form its own school district will frustrate JCBOE's desegregative planning efforts, including JCBOE's proposal to increase integration and address quality of education and facilities inequities in the areas adjacent to the city of Gardendale. GBOE's proposed separation also adversely impacts JCBOE operations in the following areas that it must address to attain unitary status, some of which are referred to as the *Green*<sup>1</sup> factors: student assignment, facilities, faculty and staff assignment, quality of education and transportation. Furthermore, if GBOE is allowed to separate, the result will be the creation of a back door that undermines, and may render impossible, the meaningful desegregation of the county school system.

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<sup>1</sup> In *Green v. School Board of New Kent County*, 391 U.S. 430 (1968) the United States Supreme Court described six areas of operation that must be free from racial discrimination before full unitary status can be achieved: (1) student assignment; (2) faculty assignment; (3) staff assignment; (4) extracurricular activities; (5) facilities; and (6) transportation. A court may also consider other ancillary factors such as quality of education. *See Freeman v. Pitts*, 503 U.S. 467, 492 (1992).

Second, GBOE has not shown a good faith commitment to comply with the constitutional desegregation mandate of this Court. Contradicting clear constitutional legal precedent and the law of this case, GBOE has expressly disavowed its desegregation obligations and raised a legally baseless challenge to the jurisdiction of this Court. GBOE has also failed to demonstrate good faith in its inclusion of residents from North Smithfield Manor and Greenleaf Heights in the most recent iteration of its separation plan.

Third, GBOE's separation from JCBOE appears to be motivated in part by an unlawful discriminatory purpose. GBOE was launched in a racially charged and fear-driven atmosphere and within a historical context that suggest a discriminatory motivation. Further, GBOE lacks a plausible, racially neutral justification for its separation, and the separation will have a disparate impact on Black students. Taken together, there is enough evidence is sufficient to infer that GBOE's decision to separate from JCBOE was motivated in part by discriminatory intent.

For these reasons Private Plaintiffs object to GBOE's Motion to Operate a Municipal School System and Plan of Separation.

**I. Introduction**

*A. Stout Litigation*

In 1965, Plaintiffs<sup>2</sup> successfully sued JCBOE to enjoin its continued maintenance of *de jure* racially segregated schools. (Doc. 1 p. 2). Since that time, white municipalities have sought to form separate school systems as a way to avoid the desegregation orders of this court.

From 1965 until 1970, JCBOE proposed constitutionally-insufficient desegregation plans, which were all successfully appealed by the Plaintiffs and Plaintiff-Intervenors. *See e.g., U.S. vs. Jefferson Cnty. Bd. of Ed.*, 372 F.2d 836 (5<sup>th</sup> Cir. 1966); (Doc.1 p. 3-14).<sup>3</sup> In 1970, this court ordered JCBOE to produce a comprehensive desegregation plan that, for the first time, would accelerate the desegregation of JCBOE schools in compliance with *Singleton v. Jackson Municipal Separate School District* 419 F.2d 1211 (5<sup>th</sup> Cir. 1969) (ordering an end to delaying the implementation of desegregation plans by February 1970); (Doc 1 at 14). After this comprehensive order to desegregate, the almost-exclusively-white cities of Midfield, Homewood, Pleasant Grove<sup>4</sup>, and Vestavia Hills all sought to secede from JCBOE and form

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<sup>2</sup> The Plaintiffs filed the suit on behalf of all Black students attending schools operated by the JCBOE. (Doc. 2 p. 1-2). Plaintiff-Intervenor, the United States, joined this case after the initial injunction and order were entered on July 12, 1965 (Doc. 1 p. 2).

<sup>3</sup> On May 27, 1968, the Supreme Court declared in *Green v. School Board of New Kent County*, 391 U.S. 430 (1968), that “freedom of choice” plans were insufficient where no white child opted to attend a Black school and the vast majority of Black children had not opted to attend a white school. JCBOE’s prior desegregation plan was found to be insufficient, and was ordered to produce a plan in compliance with *Green*.

<sup>4</sup> In 1972 the Fifth Circuit Court of Appeals affirmed the district court’s order that the JCBOE retain operation of the Pleasant Grove schools after the Pleasant Grove Board of Education failed

their own school districts pursuant to Alabama state law. *Id.*<sup>5</sup> Plaintiffs objected to their proposed separations because they were designed to avoid the integration ordered by this Court. This Court subsequently ordered those school districts to comply with the desegregation orders of this court. *See Stout v. Jefferson Cnty. Bd. of Ed.*, 448 F.2d. 403 (5<sup>th</sup> Cir. 1971). Later in 1971, this Court issued an amended order establishing the desegregation obligations of the city systems. (Doc. 226) (“1971 Order”).<sup>6</sup> That order remains operative in this case.

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to commit itself to the effort toward countywide desegregation. *See Stout v. Jefferson Cnty. Bd. of Ed.*, 466 F.2d 1213, 1214 (5<sup>th</sup> Cir. 1972) (“The district court on remand correctly interpreted our prior order and directed the splinter districts to accept a proper role in the desegregation of the county system. Pleasant Grove refused to accept its role and was unwilling to live within the district court's orders.”).

<sup>5</sup> Under Alabama state law, municipalities that reach a population of 5,000 or more inhabitants may negotiate a withdrawal from the county school system to form an independent municipal school system. *See* Ala. Code § 16-11-2; Ala. Code § 16-11-9.

<sup>6</sup> Among other things, the 1971 Order contains provisions regarding JCBOE’s obligations with respect to school construction, student assignment (transfers, attendance zones and grade configurations), the separation of school districts, and faculty and staff assignment. The 1971 Order also set forth the desegregative obligations of the Midfield Board of Education, the Homewood Board of Education, the Pleasant Grove Board of Education<sup>6</sup> and the Vestavia Hills Board of Education, all of which had separated from the Jefferson County School System prior to the issuance of the amended 1971 order.

The 1971 Order further stated that “[p]art of the Mt. Olive and Snow Rogers attendance zones are in the Mortimer-Jordan H.S. zone. The attendance zones for the schools in the Gardendale zone shall, commencing with the 1972-73 school year, be subject to alteration by the county board to achieve the result directed by the provisions of l(a)(5) hereof.” (Doc. 226 at 2). The 1971 order described a Gardendale zone that included Gardendale High School (grades 8-12), George Rogers Vocational (grades 10-12), Gardendale Elementary School (grades 1-7), Mt. Olive Elementary School (grades 1-8) and Snow Rogers Elementary School (grades 1-6). *Id.* at 2.

In 1965, when this case began, there were six school districts in Jefferson County, including JCBOE. Today, as a result of secessions from JCBOE, Jefferson County contains a total of 12 school districts, creating complex desegregation challenges. Six school districts have seceded from Jefferson County since 1970; GBOE proposes to be the seventh. Because the county contains so many individual school districts, school desegregation is difficult to achieve and maintain. Desegregating the schools in Jefferson County is a complicated undertaking, with different individual districts competing for resources, faculty and students.

*B. Gardendale's Plan for Separation*

In 2010, JCBOE built a new \$51-million, state-of-the-art high school inside the Gardendale city limits. (Doc 1001-3 at 6). Within approximately two years of the high school's construction, the City of Gardendale initiated efforts to form an independent municipal school district. In October 2012, a group of Gardendale residents asked the Gardendale City Council to fund a feasibility study to assess the financial viability of forming a municipal school district. One core group of individuals was particularly active in the push to separate from JCBOE in the early stages. They would eventually go on to form "FOCUS Gardendale," an organization started by current GBOE board members David Salters and Chris Lucas, and eventually joined by Chris Segroves. *See* Joint Ex. 9 Salters Dep. at 50:5-51:1; Joint Ex. 8 Lucas Dep. at 61:4-63:15; Joint Ex. 7 Segroves Dep. at 41:12-44:15. Proponents of the Gardendale separation led a campaign to pass a tax that would fund the formation of an independent school district. JCBOE opposed the passage of that tax and urged voters to vote against the tax increase. (Doc. 1001-15). The efforts of Gardendale's core proponents of separation were ultimately rewarded as the tax gained approval through a referendum. On March 12, 2014, by Ordinance 2014-007, the City of

Gardendale established the Gardendale City Board of Education. (Doc. 1002 at 2). In August 2014, GBOE hired Dr. Patrick Martin as Superintendent and Randy Dunlap as Chief School Financial Officer.

Following these hires, the JCBOE and GBOE tried to resolve their disagreements regarding payment for the transfer of schools located in Gardendale, but ultimately the parties could not agree on terms of GBOE's separation. The two boards then petitioned the Alabama State Superintendent of Education, Dr. Thomas R. Bice, to determine the just and proper disposition of the matters pursuant to Ala. Code § 16-4-8. (Doc. 1002-4 and Doc. 1002-5 at 1). On February 26, 2015, Dr. Bice issued a final decision, granting GBOE a separation from the County system but stated that the decision was "subject to the United States District Court's jurisdiction in *Stout*. . . to ensure compliance with federal desegregation laws and the orders of that court" and further directed the parties to file a copy of his decision with this Court. (Doc. 1002-5 at 3).

On March 12, 2015, JCBOE filed a supplemental report with this court and raised the issue of GBOE's failure to seek approval of the separation in federal court. (Doc. 1001). One day later, and over one year after GBOE's formation, GBOE moved to intervene in compliance with the 1971 Order to "demonstrate to the Court that the operations of the Gardendale Board will not adversely affect desegregation". (Doc. 1002). On March 18, 2015, this Court conditionally

granted GBOE's motion to intervene in this case. (Doc. 1003).<sup>7</sup> On December 11, 2015, GBOE filed its Motion to Operate a Municipal School System (Doc. 1040) and accompanying plan ("Gardendale plan") (Doc. 1040-1).

The Gardendale plan is a proposed agreement to resolve the separation between JCBOE and GBOE. It proposes to assume operational control of the four JCBOE schools within the Gardendale city limits—Snow Rogers Elementary, Gardendale Elementary, Bragg Middle School, and Gardendale High School—and to educate in perpetuity only the students living within the Gardendale city limits. JCBOE students who live outside of the Gardendale city limits but who currently attend those schools will be excluded from the GBOE system. Those students have the option to continue to attend their schools until they graduate; however, they are under no obligation to do so. This transition process would last thirteen years, until current kindergarten students have graduated from high school. (Doc. 1040 at 4-5). The agreement conveys no rights to these transition zone students, it merely offers them the choice to attend GBOE schools at the expense of JCBOE. *Id.* The GBOE plan also forces a small pocket of students from the predominantly Black North Smithfield Manor area to go to GBOE schools, but it does not establish a legal obligation for GBOE to educate those students so, GBOE can remove them at any time. (Doc 1040 at 5-6). The plan requires JCBOE to continue to serve GBOE

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<sup>7</sup> During the intervening period prior to being granted intervention, but three days after requesting intervention GBOE went to state court without notice to the *Stout* Parties or reference to the *Stout* litigation. (Doc 1003 at 2).



students with special needs at the expense of GBOE. (Doc. 1040 at 6). The plan does not resolve how inter-district transfers for special academic programs will operate. *Id.*

**II. GBOE’s Plan Would Further School Segregation and Impede the Desegregation Efforts of JCBOE.**

This Court should bar GBOE’s efforts to create its own municipal school district because GBOE has not satisfied its burden of proving that the separation is consistent with this Court’s efforts to desegregate Jefferson County schools.<sup>8</sup> When a school district—often termed a “splinter district”<sup>9</sup>—seeks to separate from an existing district operating under a federal court’s desegregation order, it must seek and receive approval from the supervising court. *Lee v. Chambers County Bd. of Educ.*, 849 F. Supp. 1474, 1500-01 (1994). The Supreme Court has clearly established that this type of separation request “must be judged according to whether it hinders or furthers the process of school desegregation.”<sup>10</sup> *United States v. Scotland Neck Bd. of*

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<sup>9</sup> The Supreme Court of the United States in *Wright v. Council of City of Emporia*, 407 U.S. 451 (1972), used the term “splinter district” to refer to the circumstances where state or local officials “carv[e] out a new school district from an existing district that has not yet completed the process of dismantling a system of enforced racial segregation.” 407 U.S. at 452-53.

<sup>10</sup> In order to fulfill its desegregation obligations and achieve unitary status, a school board must prove that it has: (1) fully and satisfactorily complied in good faith with the court's desegregation orders for a reasonable period of time; (2) eliminated the vestiges of prior de jure segregation to the extent practicable; and (3) demonstrated a good faith commitment to the whole of the court's order and to those provisions of the law and the Constitution which were the predicate for judicial intervention in the first instance. *See e.g., Freeman v. Pitts*, 503 U.S. 467, 491-92, 498 (1992). In order to achieve unitary status a district carries the “heavy burden,” *Green*, 391 U.S.

*Educ.*, 407 U.S. 484, 489 (1972) (citing *Wright v. Council of City of Emporia*, 407 U.S. 451, 460 (1972)). Thus, a “splinter school district[] may not be created... where the secession has a substantial adverse effect on the desegregation of the county district.” *Wright v. Council of City of Emporia*, 407 U.S. 451, 462 (1972); *Stout v. Jefferson County Bd. of Educ.*, 448 F.2d 403, 404 (5th Cir. 1971); *Ross v. Houston Independent School Dist.*, 559 F.2d 937, 942 (5<sup>th</sup> Cir.1977) (“*Ross I*”). The burden of proof lies with the splinter district, and where, as here, the proposed school district cannot meet its burden, “then a district court, in the exercise of its remedial discretion, may enjoin it from being carried out.” *Id.*

This review is essential because, splinter school districts have opted to separate from “parent school districts”<sup>11</sup> subject to a desegregation order as a “dilatory tactic[]” to “impede[] the good-faith efforts of others to bring school systems into compliance.” *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1267, 1275 (U.S. 1971) (noting this tactic as an abuse of the right to form a new school system). Indeed, in this very case, the federal court of appeals<sup>12</sup> has stated that evaluating the “issue” of secessionist districts was “fundamental to the total

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at 439, of proving that it has eradicated discrimination “root and branch” in student assignment, faculty and staff assignments, transportation, extracurricular activities, and school facilities (the “Green factors”). *Id.* at 435. “[T]he Green factors need not be a rigid framework,” *Freeman*, 503 U.S. at 493, and courts may also consider other factors, like quality of education. *Id.* at 473-74.  
<sup>11</sup> See *Lee v. Chambers Cnty. Bd. of Educ.*, 849 F. Supp. 1474, 1500 (M.D. Ala. 1994) (describing a splinter district as one “which has split off from another system (parent) which is operating under an existing desegregation order”).

<sup>12</sup> In *Bonner v. City of Pritchard*, 661 F.2d 1206 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions that the former Fifth Circuit Court of Appeals issued prior to the close of business on September 30, 1981.

desegregation effort of the Jefferson County District.” *Stout v. Jefferson Cnty. Bd. of Ed.*, 466 F.2d 1213, 1214 (5th Cir. 1972); *See e.g. Ross v. Houston Indep. Sch. Dist.*, 559 F.2d 937, 942 (5th Cir. 1977) (evaluating the impact the separation would have on the “ongoing desegregation order” is the “fundamental issue” for determining its permissibility).

GBOE’s request to separate should be denied because it will have an adverse and segregative effect on Jefferson County Schools. First, GBOE’s separation will add to the cumulative adverse impact of prior separations on JCBOE’s ability to desegregate. The separation will also frustrate JCBOE’s current desegregation plan for Fultondale High School. Additionally, the separation will adversely impact JCBOE’s ability to further desegregation in several important areas of operation. Finally, if GBOE is allowed to separate, it will create a backdoor path to maintaining and deepening segregation, contravening the fulfillment of JCBOE’s federally-mandated desegregation obligations.

*A. JCBOE’s Desegregation Planning is Frustrated by the Cumulative Impact of Prior Separations*

Separating school districts are not allowed to form if they will complicate a “parent” district’s compliance with its desegregation obligations. *Chambers* at 1499-1500. GBOE’s proposed separation will frustrate the desegregation of JCBOE independently, as well as a part of the cumulative impact of the prior separations. To understand the gravity of GBOE’s impact on JCBOE, it must be viewed with the context of the demographics of prior splinter districts as well as the impact on JCBOE.

GBOE’s plan is just one more link in the lengthy chain of separations that have impeded the desegregation of Jefferson County. Seven city districts have already splintered, which has removed many white students from the district and led to the creation of hyper-segregated

districts Hoover, Leeds, Mountain Brook, Trussville, and Vestavia Hills. Joint Ex. 18 Cooper Expert Report at 8. The Gardendale split brings the county a step closer to the reinstatement of a dual system.

Further, between 2005 and 2015, there has been a significant demographic shift in JCBOE while the inverse has occurred in the “splinter” districts. In 2005, white students made up the majority of JCBOE at 60.87%. Cooper Report at 18. In 2015, Black students were a “plurality” at 47.29%, compared to white enrollment at 43.43%. Cooper Report at 15. During the same period, splinter districts experienced growth and student enrollment increased and became whiter. *See* Table 1 App’x A.

The socio-economic segregative impact of the separations is also of concern. The loss of resources to the city systems hamstrings JCBOE’s ability to serve the county students left behind. The separations have created severe economic segregation between the systems in Jefferson County. For instance, Birmingham City School District shares the most segregating borders of any school district in the country. *See* “*Fault Lines: America’s Most Segregating School District Borders*” EdBuild, 2016, at 15 available at <https://s3.amazonaws.com/edbuild-public-data/data/fault+lines/EdBuild-Fault-Lines-2016.pdf>. Specifically, EdBuild examined the most segregating borders between school districts across the nation and found a significant correlation between segregation and economic disparity, with increased negative educational consequences for students in low-income Black communities. *See id.* at 4. It concluded that the Jefferson County School District’s neighbor, the Birmingham City School District, shares the most segregating borders of any school district in the country. *See id.* at 15. Of Birmingham’s 13

shared borders, “six are among the top 50 in the country—more than any other district in America.” *Id.*

Birmingham used to border a smaller number of more sizeable school districts, including Jefferson County School District, which has been carved into pieces over time. Five of the six districts sharing Birmingham’s worst borders, including both Vestavia Hills and Mountain Brook, were created when they seceded from Jefferson County to form their own separate school systems. . . In Jefferson County, these secessions established wealthy, enclave districts that present a stark contrast to Birmingham.

*Id.* These wealthy enclaves have grown more populous and prosperous as they siphon students from larger, neighboring districts. *See id.* at 16. Districts that lose these students often see “their concentrations of students in poverty increase,” and “are often forced to take measures to address the logistics of educating fewer students in a system built to accommodate many more.” *Id.* In Jefferson County, the transfer of white, affluent students from the county to the splinter districts is likely to continue based on the behavior of previous splinter districts in the county.

On top of the separation from Jefferson County, GBOE is also likely to annex additional white-majority areas that are currently served by Jefferson County schools. *See* Sarah A. McCarty, “Gardendale Not Annexing Mt. Olive” available at [www.al.com](http://www.al.com) (Feb. 20, 2014) (last accessed Aug. 25, 2016), *see* Ex. 19 Sachs Report at 22-25. Since 1988, each of the three splinter districts to leave Jefferson County has annexed territory following its departure. *See* Cooper report at 8. Furthermore, GBOE board members have specifically indicated a desire to bring the Mt. Olive community into GBOE. *See* Lucas Dep. 51:10-52:8; Salters Dep. 107:23-110:112; App’x C Beason Dep. 47:18-51:23. Dr. Ira Harvey’s feasibility report for the City of Gardendale

also notes that unincorporated areas of Northern Jefferson County are likely to be annexed into a municipality in the future. *See* “A Report on the Financial Feasibility to Form an Independent City School System for the Municipality of Gardendale, Alabama”, May 14, 2013, pp. 40-41. The proposed annexation of Mt. Olive—and almost any potential future annexation from Northern Jefferson County—would remove additional white students from JCBOE because the areas adjacent to Gardendale are predominantly white and all within Jefferson County. *See* Cooper report at 35-38 (observing that “annexation of Mount Olive and areas north of present-day Gardendale city limits would cut the Black student residency in [GBOE] from 20.8% to 15.1%”).

These annexations will only exacerbate the negative impact on Jefferson County’s ability to desegregate. With constantly changing borders, JCBOE cannot effectively develop long-term plans to further and maintain desegregation. When each city system annexes they leave behind pockets of students they deem undesirable, which the county must continue to educate. From the first separation under this Court’s orders through to GBOE, each separation and annexation leaves behind a system that is more Black and has fewer resources.

Another way to view the impact of the prior separations is to focus on the last two separations: Leeds, in 2003, and Trussville, in 2005. When the trajectories of the two splinter

districts are compared to that of JCBOE, a concerning trend appears.<sup>13</sup> Since Leeds and Trussville seceded from the county system, JCBOE has consistently lost student population, while Leeds and Trussville have experienced the inverse: steady growth. *See* Table 1, App'x A. Similarly, the splinter districts and JCBOE have headed in opposite directions in terms of their population of white students. Since 2003, Jefferson county has lost 11,141 white students—a decrease of approximately 42%. The inverse is true for Leeds and Trussville: Leeds has experienced an increase of 43.35% in its white student population, and Trussville has experienced an increase of about 3% in its white student population. *See* Table 2, App'x A.

Conversely, since 2003, Jefferson County has experienced a steady increase in Black student enrollment. During the past 13 years, JCBOE's Black student population has increased by a total of 6524 students, which amounts to approximately a 60% increase. In contrast, Trussville has seen a much smaller increase in the Black student population, adding 136 students between 2005-2016—a 39% increase. Leeds has seen very little change in Black student population; it has 8 fewer Black students in the 2015-2016 school year than it did in the 2003-2004 school year, even though the total student population increased. *See* Table 3 App'x A.

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<sup>13</sup> Although there could be a number of intervening events and forces that have contributed to these trends, the comparisons still provide insight into the impact separations have made on the county.

These figures demonstrate the challenge that repeated separations create for the desegregation of JCBOE's schools.

B. *GBOE's Separation Would Prevent JCBOE from Implementing a Plan Designed to Further Desegregation at Fultondale High School and Would Frustrate JCBOE's Efforts to Desegregate Generally.*

GBOE's separation would hamper JCBOE's desegregation proposal.<sup>14</sup> JCBOE's Superintendent has proposed to consolidate the aging and inadequate Fultondale High School with Gardendale High School. The consolidation would further desegregate the geographic Fultondale area, resolve facility inequities and underutilization, and also provide Fultondale High School's students with the opportunity to attend a superior facility with significantly more educational opportunities. (Doc. 1078 at 20). With respect to demographics, Fultondale High School's student population was 37% Black in the 2015-2016 school year, and Gardendale High School's student population was 27% Black. Joint Ex. 15 Cropper Report at 23. Given both the current enrollment and the demographics of the communities affected, this proposal—if approved—would lead to greater desegregation of Gardendale High School. *See* Joint Ex. 14 Cooper Dep. at 25:15-17. The consolidation will also resolve capacity issues at Fultondale High School, which is

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<sup>14</sup> While Private Plaintiffs have not fully evaluated JCBOE's plan to consolidate Fultondale High School and Gardendale High School, it is clear that some desegregative action is needed to address issues at Fultondale High. Furthermore, because JCBOE's plan involving Fultondale High School was filed after the completion of Private Plaintiffs' expert report, Mr. Bill Cooper will provide a supplemental report to further evaluate this option.



near 100% utilization, and improve the utilization of Gardendale High School, which is currently underutilized at 75%. Cropper Report at 21.

If GBOE is allowed to separate and take control of Gardendale High School, JCBOE—no longer in control of the school buildings located within Gardendale—will not be able to consolidate Fultondale High School with Gardendale High school and thus, will not be able to address its utilization inefficiencies in the Fultondale region of the county without considerable financial investment to improve Fultondale High School, or rezoning Fultondale students to more segregated high schools. *Id.*

GBOE's plan, which was not fully articulated to and negotiated with JCBOE, will frustrate JCBOE's ability to desegregate generally. Separating school districts must present a plan that resolves all issues with the "parent" districts. *Ross I*, 559 F.2d at 944. *See also Chambers*, 849 F. Supp. At 1499 (court denied formation for a school district where the remaining features could be "negotiated between the school systems, resolved by the State Superintendent of Education, or be determined by this court" finding that allowing the secession would "inevitably cause friction" and force the court to engage in a level of "detailed supervision.... that would be unwieldy and unwise). Gardendale's plan does not resolve the issue of interdistrict transfers to special academic programs in either District, yet requires JCBOE to continue to educate GBOE students with special needs at the Burkett Learning Center. These issues will involve complex negotiations that effect areas of concern to JCBOE's desegregation efforts to achieve unitary status in the area of quality of education. In addition, GBOE leadership admitted that there is not a clear direction for making changes within the Gardendale system post secession. Lucas Dep. at 16:6-19:4, 27:2-30:10. GBOE's lack of planning and preparation for its

school system will harm both GBOE students as well as frustrate JCBOE's desegregation efforts. Therefore, GBOE should be prohibited from separating.

*C. GBOE's Separation Adversely Impacts JCBOE's Operations in the District with Regard to Several Green Factors.*

GBOE's separation would have a negative impact on JCBOE's operations with regard to student assignment, facilities, faculty and staff assignment, quality of education and transportation.

*i. Student Assignment*

In order to assess the impact of GBOE's separation plan on the desegregation of Jefferson County schools, the demographic impact of the separation must be examined. *See Chambers*, 849 F. Supp. at 1486. Viewed through that lens, GBOE will impede the desegregation of JSCD students in three ways. First, GBOE will make Jefferson County less diverse overall. *See e.g. Cooper* at 43; *Cropper* at 2; *Yun* at 2. GBOE separation would result in a 3% increase in Black student residency in the northern JCSD surrounding Gardendale, which is a substantial increase. *See Cooper* at 34; *see also Burlison v. Cnty. Bd. of Election Comr's of Jefferson Cnty.*, 308 F. Supp. 352, 356 (E.D. Ark.), *aff'd sub nom* (parenthetical); *Burlison v. Cnty. Bd. of Election Comr's of Jefferson Cnty.*, 432 F.2d 1356 (8th Cir. 1970) (finding a 2% increase in the county's Black population and 2% decrease in the white population to be a substantial impact). Beyond that initial change, the separation will also make the schools served by JCBOE less diverse over time if GBOE follows the path of their predecessor splinter districts and begins to annex mostly-white areas from JCBOE following the separation. *See Cooper* at 35-38, 40, 41, 42-44.

Essentially, Gardendale would become “a white island” in a diverse county. *Wright v. Council of City of Emporia*, 407 U.S. 451, 472 (1972).

Second, by admission of GBOE’s own demographer and as reported by an expert for Plaintiff-Intervenors, GBOE’s plan results in students moving approximately 500 from relatively diverse Gardendale schools to less integrated schools in other parts of Jefferson County. *See* Joint Ex. 11 Sachs Dep. 23:1-15; Cropper Report at 2, 24.<sup>15</sup> All of the middle and high schools surrounding the current Gardendale attendance zone are over 90% White or 80% Black. Thus, if GBOE separation is approved, county students who transition from a Gardendale school to a nearby JCBOE school will likely be moving from a diverse school to a less diverse one. *See* Cropper Report at 23 (showing racial percentages for area schools). For instance, under GBOE’s plan, students from the predominately white Mt. Olive area will be moved from Bragg Middle School and Gardendale High School, which have Black enrollment figures of 27% and 23%, to North Jefferson Middle School and Mortimer Jordan High School, which both have Black enrollment figures of 6%. *Id.* at 24.

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<sup>15</sup> Additionally, zoning Black students to Fultondale High School carries additional historically segregative significance, as the high school was formerly a “colored school” under de jure segregation called New Castle Heights. In fact, as witnessed by Private Plaintiffs during site visits to the school, the insignia of New Castle remains on the entrance floor of Fultondale, concealed by a rug.

Third, based on 2015 student residency figures, GBOE will be 20% Black if it is permitted to separate—excluding students living outside the Gardendale city limits—while JCSD will be 47.2% Black.<sup>16</sup> Cooper at 34. Based on these figures, GBOE should not be allowed to form because it is disproportionately less Black than the rest of the Jefferson County School District. *See Ross v. Houston Independent School District*, 583 F.2d 712, 715 (5th Cir. 1978) (“*Ross II*”) (denying separation because the proposed district would be “disproportionate to [the district] as a whole”).

*ii. Facilities*

GBOE’s separation plan also hinders JCBOE’s desegregation efforts with regard to school facilities. First, GBOE’s proposal involves its appropriation of the \$51 million, state-of-the-art Gardendale High School. The loss of Gardendale High School would hurt JCBOE because the facility is newer than many other facilities within the District, and because it was specifically designed and outfitted to serve as a regional career and technical education hub for a significant portion of JCBOE. Gardendale High School was not built to be a school aimed at serving only residents within the Gardendale City limits; rather ‘the construction projects in

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<sup>16</sup> Residency figures were used here instead of enrollment figures in order to have an accurate comparison to the proposed GBOE. This only includes GBOE students who live within the Gardendale city limits. JSCD “transition zone” students have the option to attend GBOE schools, but are under no obligation to attend GBOE schools and will remain JCSD students.

Gardendale . . . were coordinated with other projects that were made possible by the warrant issue and related tax levy.” (Doc. 1001 at 19). In contrast to its current identity as a regional career and technical education hub for many students around Jefferson County, under GBOE’s plan, the high school would eventually serve only Gardendale city residents with one exception for students from North Smithfield Manor and Green leaf Heights.<sup>17</sup>

Second, “the proposed Gardendale separation would exacerbate utilization imbalances at several affected schools” because it would remove students from the already-underutilized Gardendale High School but add students to the already over-capacity Gardendale Elementary School. Cropper Report at 2, 22. Similarly, the plan would push North Jefferson Middle School to 102% capacity. *Id.* at 22.

Third, GBOE separation furthers a dual school system because the schools that it plans to appropriate are uniquely geographically situated to facilitate integration of students from racially segregated communities. Joint Ex. 16 Yun Report at 2; Cropper Report at 34. The loss of a high quality, centrally-located facility that serves students from various areas of the county is a substantial concern and a strong reason to deny GBOE’s request. *See, e.g., Emporia*, at 464-65 (finding under the totality of the circumstances that a separation was impermissible and furthered a dual school system because the facilities in the area poised to secede were both “better

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<sup>17</sup> As explained in greater detail in Section III, the inclusion of North Smithfield is for an indefinite period of time. *See* Doc. 1040 at 5. The inclusion of North Smithfield and Greenleaf students is also questionable for other reasons further explained in Section III.

equipped” and “located on better sites than other schools in the district.”); *see also* Yun at 2, 36-39.

*iii. Faculty and Staff Assignment*

The separation plan’s effect on faculty and staff also militates in favor of denying GBOE’s request to secede. Under the terms of the 1971 Order, all faculty and staff must be offered employment by the separating school system. This requirement is of particular importance because the presence of the special technical programs at Gardendale High School required that Jefferson County place teachers with very unique skills at this location, and those teachers will be lost to the broader school system if GBOE separates. In addition to the loss of those teachers’ services, Jefferson County will lose its investment in the training and professional development of those staff members. The loss will have a profound effect on the quality of education of students in Jefferson County as discussed in greater detail below.

Furthermore, JCBOE will also gain a competitor for future hires. Going forward, GBOE would compete with JCBOE for a diverse and qualified faculty and staff, who are always in high demand. *See* Joint Ex. 6 Martin Dep. 183:3-186:11; Joint Ex. 1 Pouncey Dep. 69:14-71:6. As noted by Dr. Pouncey, “Finding teachers is hard for everybody” at present. *Id.* at 71:1. Municipal school districts tend to target accomplished teachers at larger school districts and then use their financial advantages to offer higher salaries and lure those teachers away. *Id.* at 69:14-25. This is not only important to JCBOE’s obligation to hire and retain Black faculty and staff, but also to retain specialized faculty and staff. JCBOE must take significant steps to meet its desegregation obligation in this area, and Gardendale’s separation will only frustrate JCBOE’s ability to hire and retain a diverse and highly qualified faculty and staff. Pouncey Dep. at 71:2-6.

iv. *Quality of Education*

GBOE's separation plan is also impermissible because it will have a significant adverse effect on the quality of education received by students remaining in Jefferson County Schools. A separation plan may not sacrifice the educational future of some students to improve the futures of others, *Emporia* at 463, and a school district may not separate if the "upgrading of quality of education for students in the new district would have a substantial adverse effect on the quality of students remaining in the old district." *Ross I* at 943-44; *see also Emporia* at 468 (holding that separations "purchased only at the price of a substantial adverse effect upon the viability of a county system," in terms of educational quality and diversity of the student body, are prohibited).

As reflected in the expert report of Dr. Yun, the Department of Justice's quality of education expert, the loss of Gardendale schools would have a significant effect on the quality of education in the Jefferson County schools. Gardendale has far superior facilities and offerings in key instructional areas that would be lost to a large swathe of Jefferson County students should Gardendale schools secede from the County. The effect is most substantial in the area of technical education. For a large percentage of the courses offered at Gardendale High School, Gardendale High has more classroom slots than the rest of the schools in Jefferson County combined. Yun Report at 22. Gardendale programs often have superior personnel. *See id.* at 23. This superiority extends to the quality of Gardendale's equipment and facilities, which are "excellent" and boost the quality of the offerings. *Id.* For instance, Gardendale High's auto body shop has painting bays that do not exist elsewhere in the Jefferson County schools. *Id.* The school also has "large banks of computers" and "state of the art printing equipment," among other assets. *Id.* In sum, the school's technical offerings are unique within the Jefferson County

school district. Given the “uniqueness of the programs, the dominance of some specific programs, and the lost experience and capital,” Dr. Yun concluded that it “would be virtually impossible to replace [these attributes] in the short-run and very difficult to cultivate in the mid-to long-run.” *Id.* at 25.

The value of Gardendale’s educational offerings is not limited to its excellent technical courses. For instance, Gardendale High School has a culture of enrolling both Black and white students in AP courses, and the school has more students enrolled in AP classes than most JCBOE high schools. *Id.* at 23, 25. To take an example from the elementary level, Gardendale Elementary “is moving more Black students to proficiency than most other schools in the district.” *Id.* at 25. In some other realms, Gardendale’s schools do not stand out as uniquely superior; however, they rarely fall below the middle of the pack in Jefferson County, and the loss of this competence is also significant. *See id.* at 18-35. Because Gardendale schools are generally competent, and other schools in Jefferson County are often worse, the loss of Gardendale’s competence means that in many cases students will be moved to inferior institutions. *See id.* at 5.

v. *Transportation*

Finally, GBOE’s separation would have a negative impact on the transportation of JCBOE students.<sup>18</sup> First, as the government’s demography expert, Mr. Cropper, explains, “students who would be affected by the separation proposal would have to be transported several

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<sup>18</sup> Transportation refers to both the condition of the roads upon which children are expected to travel and the duration of their travel; plans that “significantly impinge on the educational process” are prohibited. *Swann* at 1270 (contextualizing the *Green* transportation factor).



miles farther to school compared to their current commute.” Cropper Report at 2. The plan is also inefficient because some students on the same street would be zoned to two different areas, necessitating two buses to travel the same road, simply to accommodate the secession. Cooper Dep. 52:8-10. Additionally, new buses would be needed to transport children if GBOE operates. McPherson Report at 38.

*D. JCBOE’s Desegregation Planning is Frustrated by the Uncertainty Created by the Prospect of Future Separations and Annexations*

This Court should also deny GBOE’s separation request because it will serve as a catalyst for future separations by other municipalities. When reviewing the separation request of an aspiring splinter district, courts may consider the potential for the proposed district to encourage separation efforts by other municipalities. *See Ross v. Houston Indep. Sch. Dist.*, 457 F. Supp. 18, 24 (S.D. Tex. 1977), *aff’d in part, vacated in part*, 583 F.2d 712 (5th Cir. 1978) (“*Ross II*”) (acknowledging that an earlier judge’s prediction that if a splinter district were allowed to form, then other efforts would be made to organize separate school districts and a very bad precedent would be created had proved to be true). For instance, in *Ross II*, the court prohibited a potential splinter district from separating because it would “act as catalyst to increase white flight by encouraging white families to move... and by spurring persons in other predominantly White areas... to form school districts of their own.” *Ross II* at 715; *see also Lee v. Macon County Bd. Of Ed.*, 448, F.2d 746, 752 (5th Cir. 1971) (denying a separation in part because it could lead to “incorporated towns for every white neighborhood in every city.”)

Allowing Gardendale to secede would undermine the JCBOE’s plan to locate several educational hubs interspersed throughout the district, and would also encourage other municipalities to splinter, especially those that might have the opportunity to appropriate newer,

lavish facilities built with county funds. *Id.* One potential separation that could follow if GBOE is allowed to separate would be a Warrior/Kimberley school district. Warrior/Kimberly has three schools and could annex some additional territory to reach the 5,000-person limit. Cooper Dep. at 125:7-11. It is also a high-income community with a median income of \$80,000—a \$20,000 advantage over Gardendale. *See id.* at 125:12-16. Importantly, the likelihood of future separations is made more evident by viewing each potential separation in the context of previous separations rather than in isolation, to avoid treating potentially seismic actions on the part of municipal school boards as trivial exercises of educational ambitiousness. Cooper Dep. at 125:25-126:126:6.

In addition to future separations by other municipalities, GBOE's imminent annexations of additional land will also exacerbate the negative impact of GBOE's proposed separation on JCBOE's ability to desegregate. Annexations are Additional annexations by GBOE of predominantly white, unincorporated areas within Jefferson County will increase the percentage of whites in the city limits, *see* Cooper report, and will also, along with any future separations, lead to a fragmented and piecemeal Jefferson County School District, one dotted with an increasing number of city districts and one where the likelihood of ever complying with its desegregation obligation is increasingly dissipating.

### **III. GBOE Has Not Shown a Good-Faith Commitment to Meet Its Desegregation Obligations.**

A separating school district must do more than merely show that it will not impede the desegregation of the "parent" school district; it must also demonstrate a good-faith commitment to meeting its own desegregation obligations. *See Ross I*, 559 F.2d at 943-44; *see also Lee v.*

*Butler Cnty. Bd. of Educ.*, 183 F. Supp. 2d 1359, 1365 (M.D. Ala. 2002) (quoting *Dowell v. Bd. of Educ. of the Oklahoma City Public Schools*, 8 F.3d 1501, 1513 (10th Cir.1993) (stating that in order to show good faith, “a school district must show not only past good-faith compliance, but a good-faith commitment to the future operation of the school system...through ‘specific policies, decisions, and courses of action that extend into the future.’”). GBOE has done no such thing. In fact, GBOE has explicitly denied it has any such obligations.<sup>19</sup>

A. *GBOE Has Expressly Disavowed Its Constitutional Desegregation Obligations.*

On August 19, 2016, GBOE filed a document in which, *inter alia*, it disclaimed any desegregation obligations. (Doc. 1090, “Answer”). The document—styled as an “Answer in Intervention” despite the fact that intervention was granted in March, 18 2015 (Doc. 1003)—

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<sup>19</sup> Evidence of a school district’s good faith compliance with mandatory desegregation efforts can also be compelling evidence against charges of intentional discrimination. *See Freeman v. Pitts*, 503 U.S. 467, 498-99 (1992) (holding that “[a] history of good-faith compliance is evidence that any current racial imbalance is not the product of a new de jure violation” and that “[w]hen a school district has not demonstrated good faith under a comprehensive plan to remedy ongoing violations” that the court has not hesitated to approve comprehensive and continued district court supervision). Although the Court in *Freeman* did not comment explicitly about whether a district’s failure to put forth a good faith effort to desegregate was evidence of intentional discrimination, it is reasonable to view a district’s lack of good faith effort or commitment to comply with its desegregative obligations as an indication that a school board’s action may not be free from discriminatory taint.

asserts that this Court has no authority over GBOE's actions. (Doc. 1003 at 2-4). Specifically, GBOE claims that the desegregation order cannot be enforced against GBOE because the school district did not previously exist and, by extension, has not violated the Fourteenth Amendment rights of any student. *Id.* at 2. The "Answer" further asserts that the 1971 Order is not operational because the Jefferson County School System is "unitary, not dual, and has been for some time,"—a position never asserted by JCBOE or found by this Court.<sup>20</sup> *Id.* at 3. GBOE also avers that this Court cannot require GBOE to comply with the desegregation order because the Tenth Amendment trumps the 1971 order (and, presumably, the Fourteenth Amendment) and renders it a nullity. Finally, GBOE forcefully avows that any changes in the "racial ratios" of JCBOE schools during GBOE's operation "do not violate the Constitution". *Id.* at 7. In sum, GBOE has offered a full-throated declaration that it views itself to be unbound by any obligation to desegregate that may emanate from this case or any other legal precedent. This document makes clear beyond speculation that GBOE has not made a "good-faith commitment" to further its desegregation responsibilities.

B. *GBOE Has Not Presented a Constitutionally Sufficient Desegregation Plan to the Court.*

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<sup>20</sup> Anything short of a settlement or judicial findings declaring the District completely "unitary" in all areas pursuant to the requirements of *Freeman v. Pitts*, 503 U.S. 467 (1992) and *Bd. of Educ. of Okla. City Pub. Sch. v. Dowell*, 498 U.S. 237 (1991), necessitate further judicial supervision until those requirements are fully satisfied.

Gardendale's plan does not comply with applicable legal precedent or the orders of this Court. To show good faith, a school district must demonstrate "a good-faith commitment to the future operation of the school system . . . through specific policies, decisions, and courses of action that extend into the future." *Lee*, 183 F. Supp. 2d at 1365 (quotations omitted). It is "not sufficient for a splinter district to merely agree to accept a desegregation role." *Chambers*, 849 F. Supp. 2d at 1502. Rather, the district must present "precise policy positions on each significant facet of school district operations... pertinent to the accomplishment of its underlying desegregation order". *See Ross I*, 559 F.2d at 944; *Chambers*, F. Supp. at 1502 (requiring that a splinter district present a clear plan to the court to "establish what its operations will be, and must express its precise policy on each significant facet of school district operation").

GBOE has fallen well short of this standard. It has failed to draft virtually any of the required policy statements. It has not given its stance on substantial issues, outlined plans for the significant aspects of its daily operations, or explained any of its policies for changing the school district.<sup>21</sup> Further, GBOE lacks the information on which such policies would be based. GBOE

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<sup>21</sup> Further, GBOE does not have sufficient fiscal resources to operate as a separate school district. In *Ross II*, the court held that a district that was fast growing and had a tax base that would be unable to support a school in the "foreseeable future" was unable to secede. The precarious financial future of the district was cited as a key reason, why the district could not separate. (*Ross II* at 715.) Gardendale is unlikely to clear the bar of financial viability established in *Ross II*. *See* McPherson Report Gardendale has admitted that it only has six to nine months left of funding remaining. *See* Dunlap Dep. at 37:6-13. Moreover, this estimate excludes the likely large cost of litigation and the potential award of attorney's fees, if the plaintiffs are able to recover fees.

leadership does not know which programs were most popular within the expansive career and technical course offerings at Gardendale High School. *See* Joint Ex.6 Martin Dep. Individual at 62-64. Nor does it know if Gardendale would be able to sustain all 24 career and technical programs that it was selected to host (due to its central location) following the secession. *See* Martin Dep. Individual at 69. Of particular concern, GBOE is unaware of how the split would alter access to the career and technical programs for non-Gardendale residents, which is another substantial and unresolved issue regarding the separation. For instance, GBOE is unaware of how many seats would be available to county student transfers if a split occurred. *See* Martin Dep. Individual at 63-66. And GBOE also admitted that “it would be [a] possibility” to exclude county students from Gardendale’s career and technical programs if classes reached capacity with in-district students. Martin Dep. Individual at 67.

Furthermore, apart from its August 19 filing, GBOE has given little apparent consideration to its compliance with the desegregation order. Among other oversights, GBOE is unaware of how the school would resolve racial disparities in programming and educational opportunities such as in-grade retention and enrollment in advanced placement courses. Joint Ex. 5 Martin Dep. Vol II at 188:7-189:19. The district has also “not attempted” to examine racial disparities in the discipline of students in Gardendale schools. Martin Dep. Vol II at 193:25-194:20.

Of further concern, GBOE has no plans to comply with the desegregation order and diversify its staff. Martin Dep. Vol II at 182:14-20. Indeed, leadership is unaware of the basic racial demographics of the faculty and staff—information necessary to ensure compliance with a desegregation order and other applicable federal law. Martin Dep. Vol II at 175:7-14.

Consistent with concerns regarding diversity of faculty and staff, GBOE's Superintendent, Dr. Patrick Martin, has little professional experience with school desegregation or related issues of racial equity. He previously served as the Superintendent of a small, hyper-segregated white school district in Illinois. Dr. Martin has 16 years of educational experience, virtually none of which was spent interacting with people of color in a district under a desegregation order. *See* Martin Dep. at 42-45, 88-95. He previously worked as the Superintendent of the Community Unit School District 189 in Illinois, *see* Martin Dep. at 37-38, where Black students comprised 1% of the population. Martin Dep. at 41. Every teacher in the district was white. Martin Dep. at 40... Furthermore, he admitted that he had never worked in a district where more than 5% of the student population was Black, *see* Martin Dep. at 84-85, and 98-99% of the teachers, administrators, and staff with whom he worked were white. Martin Dep. at 89-92. As an administrator, he never hired an African American and never developed or implemented a diversity hiring or retention plan in the districts in which he worked. Martin Dep. 92-94. Shortly after hiring Dr. Martin, GBOE hired as its Chief School Financial Officer Randy Dunlap, who had previously served as CSFO of Culver County Schools, a predominantly white school district in Alabama. GBOE's decision to hire as its two highest ranking district officials, two individuals with very limited experience working with significant populations of Black students and faculty does not show that GBOE is serious about addressing its desegregation obligations. *See Reed v. Rhodes*, 500 F. Supp. 363, 398-99 (N.D. Ohio), *aff'd in part, rev'd in part*, 635 F.2d 556 (6th Cir. 1980), *modified*, 642 F.2d 186 (6th Cir. 1981) (admonishing a school board under a desegregation order for employing top administrative personnel who were "inexperienced, unqualified, and ineffectual...").

*C. The Treatment of the North Smithfield Manor and Greenleaf Heights in GBOE's Separation Plan Does Not Show a Good-Faith Commitment to Desegregation.*

GBOE's separation plan treats students and residents from the predominantly-Black communities of North Smithfield Manor and Greenleaf Heights as second-class citizens. When GBOE drafted its initial separation plans, it chose to exclude North Smithfield and Greenleaf Heights students—most of whom currently attend school in Gardendale—from the nascent school district. These communities were not in any prior separation plans submitted to the State Department of Education during its year of negotiations with JCBOE, nor in any of the plans or supporting documents submitted to the Plaintiffs between March and December of 2015. Rather, GBOE first added these communities to the plan after this Court brought GBOE into the case as intervenors. *See* Martin Dep. Vol. 1 at 73:8-79:19; 92:4-18.

The process by which North Smithfield and Greenleaf Heights were added to the separation plan reconfirmed the status of these communities in GBOE. It appears that GBOE never consulted the families of North Smithfield Manor and Greenleaf Heights about their inclusion in the Gardendale Plan.<sup>22</sup> To date, the parties have been presented with no evidence of surveys, community meetings, mailings, or any other meaningful outreach with those

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<sup>22</sup> For example, GBOE superintendent Dr. Patrick Martin apparently met with only three residents of North Smithfield before adding North Smithfield to the separation plan. Martin Dep. at 212:5-216:8. Only one of the three had a school-age child, and GBOE did not elicit a response from them about the proposal. *Id.* at 216:2-24.



communities before including them in the Gardendale Plan. GBOE's complete disregard and lack of engagement with this Black community stands in stark contrast to the public meetings and discussions regarding the separation plan in other predominantly white communities like Mt. Olive. *See* Martin Dep. at 219:9-11. Beyond the lack of consultation, North Smithfield and Greenleaf Heights were given no vote regarding their inclusion in the plan or the terms of that inclusion. Because they live outside the Gardendale City limits, North Smithfield Manor and Greenleaf Heights residents could not participate in the vote to fund the district's creation.<sup>23</sup> And unlike all other out-of-district students in the transition zones, families from these communities were not given the option to choose between attending Gardendale schools or JCBOE schools.

These deficiencies in the process by which Greenleaf Heights and North Smithfield were included in the plan are paralleled by the deficiencies in their status within the district. As non-residents in Gardendale, these students and families have no vote regarding school board or other local elections that influence decision-making at the schools. *See* Lucas Dep. 82:22-83:5. Furthermore, although GBOE has agreed to include these students on an indefinite basis, there is nothing binding in that agreement, and GBOE could change its mind at any point. If, for

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<sup>23</sup> As discussed in the introduction, in order to form a school system, the City of Gardendale would have to raise their taxes to fund the schools. Only Gardendale City residents could vote to raise the Gardendale City taxes. The North Smithfield and Greenleaf Heights communities are in unincorporated Jefferson County and so do not vote in Gardendale elections.

instance, GBOE achieved unitary status in the future, it could drop these communities from the Gardendale schools, and, as non-residents in Gardendale, the parents of those students would have no vote on their children's academic fate. The separation plan also disadvantages students from these communities who are currently zoned to attend Fultondale Elementary—a JCBOE school. Under the new plan, these students will attend Gardendale Elementary, a considerably older school that even GBOE views as overcrowded.<sup>24</sup>

Under these circumstances, it is not unreasonable to surmise that the inclusion of this community is not “indefinite” but rather provisional and contingent upon this Court's order. The provisional, unrepresented inclusion of these communities in the Gardendale school district does not in any way represent a “good-faith commitment” to GBOE's desegregation responsibilities.

**IV. GBOE's Efforts to Separate Should Be Denied Because Those Efforts Are Motivated, at Least in Part, by Discriminatory Intent.<sup>25</sup>**

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<sup>24</sup> GBOE admitted to not being aware of this required change until it was raised by the Plaintiffs. Martin Dep. Vol. 1 at 94:9-107:15.

<sup>25</sup> In raising concerns that GBOE's plan to separate from JCBOE is motivated in part by discriminatory intent, Private Plaintiffs do not suggest that all proponents of the separation, or any individual members of the Gardendale Board of Education and its employees, have personally acted with a discriminatory purpose. Direct proof of a discriminatory motive on the part of any individual is, however, unnecessary to prove that an official action was motivated by discriminatory intent. *See Williams v. City of Dothan, Ala.*, 745 F.2d 1406, 1414 (11th Cir. 1984) (recognizing that “discriminatory intent may be found to exist even where the record contains no direct evidence of bad faith, ill will or any evil motive on the part of public officials.”)

Plaintiffs have already established that GBOE's plan would impede the desegregation of Jefferson County's schools, *see Lee v. Lee Cnty. Bd. of Ed.*, 639 F.2d 1243, 1263 (5th Cir. 1981), but this Court should also deny GBOE's motion to separate, because GBOE separation plan is motivated, in part, by discriminatory intent.

The Supreme Court has explained that discriminatory purpose "implies that the decisionmaker ... selected ... a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Pers. Adm'r v. Feeney*, 442 U.S. 256, 279 (1979); *accord In re Employment Discrimination Litigation Against State of Ala.*, 198 F.3d 1305, 1321 (11th Cir. 1999). "Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977).

GBOE's discriminatory intent is visible in the racial appeals of the advertising created in support of the separation. It is also suggested the history and background of the decision to separate, the sequence of events leading up to GBOE's formation and decision to separate, as well as departures from normal procedures. That conclusion is bolstered by the fact that GBOE's plan to separate from JCBOE has a foreseeable, adverse, disparate impact on Black students in Jefferson County and that GBOE has failed to put forth a plausible, racially neutral justification for the decision to separate.

In *Arlington Heights*, the Supreme Court identified a non-exhaustive list of factors relevant to assessing whether an official action has a discriminatory purpose. The list includes: the specific sequence of events leading to the action; the historical background of the decision;

departures from normal procedural sequence; and the legislative or administrative history of the decision. *See* 429 U.S. at 265–68; *Knight v. State of Ala.*, 900 F. Supp. 272, 343 (N.D. Ala. 1995). Each of these factors lends support to the view that GBOE’s action is motivated, in part, by a racially discriminatory intent.

A. *GBOE’s Separation was Developed in a Racially Charged and Fear-Driven Atmosphere.*

The first *Arlington Heights* factor—the sequence of events leading to GBOE’s Plan—supports a claim of discriminatory purpose. Plaintiffs have circumstantial evidence of a racially charged, fear driven atmosphere in Gardendale that eventually led to creation of the plan. Before Gardendale raised the taxes used to create GBOE, proponents of Gardendale’s separation from JCBOE conducted a racially-driven campaign to incite Gardendale residents to support creation of a municipal school district. One advertisement<sup>26</sup> contained a list of “[p]laces that chose NOT to form and support their own school system,” and “[c]ommunities that chose to form and support their own school system,” noting that the latter “are listed as some of the best places to live in the country...” The list of desirable schools was comprised entirely of predominantly white, municipal school districts, while the cities on the undesirable list belonged to the county school system and were all predominately Black. The advertisement also utilized an image of a white, school-aged girl and asks the reader “[w]hich path will Gardendale choose?”

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<sup>26</sup> An image of the offensive advertisement is attached as Appendix B.

The fear-based nature of the pro-separation advertising campaign is also evidenced by a local resident's comment at a city council meeting shortly after taxes were raised to support the schools. On September 16, 2013, the Gardendale City Council passed a five-mill ad valorem tax to support a new system, including the hiring of a school board. On November 12, 2013, an additional five mill ad valorem tax was approved by referendum. Within one week of the passage of the additional five-mills, one Gardendale resident expressed concern at a City Council meeting that the decision to form a municipal school district may have been the "right thing for the wrong reasons", noting that she "felt that the campaign for the ad valorem passage was fear driven" based on mailers and ads she witnessed. The resident further expressed that she was "opposed to the division of community that those practices could cause."<sup>27</sup>

The racially tinged atmosphere around the separation plan was exacerbated by the significant involvement of former State Senator Scott Beason. In 2011 former Senator Beason was found by a federal court to have displayed outright racial bias, which included referring to Blacks as "Aborigines." *See United States v. McGregor*, 824 F. Supp. 2d 1339, 1345–48 (M.D. Ala. 2011) ("Beason's and Lewis's statements demonstrate a deep-seated racial animus and a desire to suppress Black votes by manipulating what issues appeared on the 2010 ballot. Lawmakers who harbor such sentiments lack the integrity expected from elected officials."). Mr. Beason and his family contributed personal funds to the separation, Beason Dep. at 41:2-44:1;

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<sup>27</sup> *See* Minutes of the Gardendale, Alabama City Council, 2, Nov. 18, 2013, available at <http://www.cityofgardendale.com/citycouncilminutes/2013/2013-11-18.pdf>.

Mr. Beason’s former campaign manager assisted Gardendale Board members in campaigning for the separation, *Id.* at 44:13-46:22; and Mr. Beason personally visited the Governor to push for the separation. *Id.* at 23:15-25:3. The combination of Mr. Beason’s participation and the racially-charged advertising campaign likely created a reasonable perception of exclusion in the Black community—a fact that has relevance above and beyond the discriminatory intent of GBOE.<sup>28</sup>

This racially-charged atmosphere surrounding the separation is also reflected in some of the posts made by residents to a Facebook forum that was created to discuss the separation. Multiple postings reflect an antipathy towards nearby areas that are predominantly Black—or have become increasingly Black—and reveal a fear that Gardendale may follow a similar demographic path. For instance, one post read, “[W]ould you like to live in Center Point or Adamsville? Wake up, it is closer than you may think. I encourage you to ride around those areas, maybe even Pinson and Huffman and think about how quickly *demographics* change.

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<sup>28</sup> A court in a desegregation case involving a municipality’s attempt to separate from an existing county school system should consider the reasonable perception of exclusion created in the African American community by such official action. *See Lee v. Chambers Cnty. Bd. of Educ.*, 849 F. Supp. 1474, 1486 n.6 (M.D. Ala. 1994) (choosing not to make a finding regarding discriminatory intent but noting that, considering all of the evidence, that there was “ample justification for Plaintiffs’ contention that a reasonable perception ha[d] been created in the African–American community in the county that racial considerations were a factor in the decision to create a separate school system in Valley.”). Here, there is a strong likelihood of a perception in the African American community that the GBOE plan is motivated by intentional discrimination.

This is a community wanting progress, not regress. Reality.” Joint Ex. 21 Excerpts of the Gardendale City Schools Facebook Page, as preserved on March 4, 2016 at 143/GCS 127 (emphasis added). Another said, “[D]id you know that they are sending school buses to Center Point and busing kids to OUR schools in Gardendale, as well as in \*Smithville!<sup>29</sup> Smithville kids have been bused here for years due to the desegregation order.” Ex. 21 at 152/GCS 127.

Another post voiced a fear of decline: “[P]eople who have moved up to Gardendale/Mt. Olive area from other places (Minor, Pinson, Center Point, Huffman, Hueytown, and Fultondale) have an appreciation for the quickness of a declining community and tend to have a broader perspective of the changes that are forthcoming. Without a strong city system to retain citizens, I believe that the area will decline rapidly.” Ex. 21 at 183/GCS 153. In another post, GBOE board member David Salters shared a link to a news article regarding a Black male teacher from Erwin Elementary School in Centerpoint who was arrested near his home in Gardendale for allegedly possessing marijuana. Despite, the subject of the article living in Gardendale, one person nevertheless commented that “...because here lately Bad people keep coming to Gardendale & Gardendale Police get them off the streets. Thank U Gardendale Police...” Another Facebook user commented on the same post, stating, “If I am not mistaken, Erwin Elementary is one of the schools that did not meet AYP last year. I think that might be where some of the "extra kids" at GES are coming from. Sad story.” It is apparent from another post, that various posters leveled

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<sup>29</sup> The reference to Smithville is almost certainly a reference to North Smithfield.

accusations of racism against other posts, and that the posts that alleged racism had been deleted. *See Id.* at 124/GCS 112 (“[U]nless you have specific factual information about racial motivation on the part of someone else where, think twice before you hit the post button. Blanket allegations of that sort will be deemed a personal attack and deleted.”). These posts are consistent with both the pro-separation advertising and the participation of Sen. Beason and taken together, likely contributed to a racially- charged atmosphere that could easily create a reasonable perception of exclusion in the Black community.

*B. The Historical Context of GBOE’s Separation Proposal Evinces a Discriminatory Intent.*

The second *Arlington Heights* factor, the historical background of GBOE’s decision to separate, also supports the conclusion that GBOE was motivated by a discriminatory intent. GBOE’s current attempt to secede is not the first attempt in the city by Gardendale to separate from JCBOE, but it is the first successful formation of a Gardendale board of education. Notably, this milestone was reached after the construction of a new high school and in the context of changing racial demographics and a fear-driven campaign to form a new school system. Moreover, GBOE’s current attempt to separate should be viewed within the context of the decades-old *Stout* litigation, including the history of municipal secessions from JCBOE that have formed predominantly white school districts. *See Lee v. Chambers Cnty. Bd. of Educ.*, 849 F. Supp. 1474, 1476–81 (M.D. Ala. 1994) (reviewing in-depth the history of Chambers county including the background of the original desegregation litigation, incorporation of the city of Valley, and the city’s attempt to separate). Importantly, GBOE’s separation attempt, considered in the context of prior separations from JCBOE, represents the latest in a long history of actions intended to avoid desegregative obligations and create predominantly-white enclaves within



Jefferson County. This history reaches back for decades and is not limited to Alabama.

Following *Brown v. Bd. of Ed. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483 (1954), efforts to evade desegregation were widespread throughout the south and wherever federal courts sought to enforce *Brown*'s mandate.<sup>30</sup>

The history of *Stout v. Jefferson* reaches back to 1965, eleven years after the Supreme Court's decision in *Brown v. Bd. of Ed. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483 (1954); and a decade after the Supreme Court adopted its infamous "all deliberate speed" formula in *Brown II*, 349 U.S. 294 (1955). Like other school boards in the South, the Jefferson County School Board rigidly resisted the desegregation of schools. By federal court order, it grudgingly accepted a "freedom of choice" plan for school desegregation until the *Green* decision was rendered by the Supreme Court. See, *United States v. Jefferson County Board of Education*, 372 F.2d 836 (5<sup>th</sup>

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<sup>30</sup> In 1966, the Fifth Circuit, in an opinion in this litigation commented on the some of the "grim realities" that made desegregation more difficult in areas that had a long history of de jure segregation, stating "[s]ome determined opponents of desegregation would scuttle public education rather than send their children to schools with Negro children. These men flee to the suburbs, reinforcing urban neighborhood school patterns. [] Private schools, aided by state grants, have mushroomed in some states in this circuit. The flight of white children to these new schools and to established private and parochial schools promotes resegregation. [] Many white teachers prefer not to teach in integrated public schools. They are tempted to seek employment at white private schools or to retire." *United States v. Jefferson Cnty. Bd. of Educ.*, 372 F.2d 836, 848–49 (5th Cir. 1966), on reh'g, 380 F.2d 385 (5th Cir. 1967). The court also noted that Alabama and Louisiana had provided tuition grants for students to attend private schools. *Id.* at n.14. See also Sarah Diem, et al., *Consolidation Versus Fragmentation: The Relationship Between School District Boundaries and Segregation in Three Southern Metropolitan Areas*, Penn St. L. Rev. 697-99 (Sep. 21, 2015) (noting that "Alabama was notoriously resistant to school integration following the Brown decision" and discussing the history of resistance to desegregation in Jefferson County specifically).

Cir.1966); *en banc*, 380 F.2d 285 (5<sup>th</sup> Cir.1967). The JCOB resisted the desegregation of faculties at its schools. *United States and Linda Stout v. Jefferson County Board of Education*, 396 F.2d 44 (5<sup>th</sup> Cir.1968); *United States and Linda Stout v. Jefferson County Board of Education*, 417 F.2d 846 (5<sup>th</sup> Cir. I 417 (1969).

Following the Supreme Court's rejection of "all deliberate speed" and embrace of a "desegregate now" formula, Linda Stout and the United States filed motions for further relief, and their motions were denied by the district court. They appealed to the Fifth Circuit; and their appeal was consolidated with fourteen others, covering all of the six states which then comprised the Fifth Circuit Court of Appeals. The Court heard the appeal *en banc*; and issued its landmark decree in *Singleton v. Jackson Municipal Separate School System, et al.*, 419 F.2d 1211, 1219 (5<sup>th</sup> Cir.1970). The "next school year" timetable of *Singleton* was reversed by the Supreme Court, *sub nom, West Feliciana Parish School Board v. Carter*, 396 U.S. 1032 (1970); and the affected school boards (including Jefferson County) were ordered to implement the new plans at the beginning of the next semester (i.e, within the next three weeks). Thus, the JCBOE basic desegregation was ordered in 1970. Modifications to the basic plan were made in 1971 and 1972.

Within a matter of weeks of the implementation of the new zoning plan by the JCBOE in 1970, four municipalities whose students were served by the JCBOE -Homewood, Pleasant Grove, Midfield, and Vestavia Hills – splintered from the JCBOE system and created separate school systems. Three of those municipalities – Pleasant Grove, Midfield, and Vestavia Hills, had not a single Black resident. Linda Stout challenged the creations of these systems. The new systems were subject to the desegregation decree. As noted earlier, Pleasant Grove's system was dismantled.

Even with a desegregation plan in place and an order to desegregate initially issued by this Court in 1970, JCBOE's efforts to desegregate have been hampered by the secession of several municipalities, which left the county school system to form independent municipal school districts.<sup>31</sup> Since the 1972 court order issued in this case, three municipalities have splintered from JCBOE. The cumulative impact of prior separations in Jefferson County provides important context for Gardendale's decision to secede from JCBOE and to become the latest in a history of predominantly white school districts to operate in Jefferson County.

Although the City of Gardendale has never separated from JCBOE, it too has a history of contemplating secession from the county school district. In 1999 the Gardendale City Council conducted a feasibility study to determine whether a Gardendale school system was financially feasible, ultimately determining that separation was not feasible and instead making a one-time donation of thirteen million dollars to be divided on a per-pupil basis amongst all four county schools located in the city. *See* Beason Dep. Pl. Ex. 3. In 2005, the Gardendale Educational Committee, formed by the Gardendale City Council, conducted a feasibility study that likewise determined that a Gardendale separation from JCBOE was not feasible. *See* Lucas Dep. Pl. Ex. 12. Interestingly, the 2005 study focused primarily on the city's high school and produced a list of expectations—one of which was the construction of a new high school in Gardendale—that if achieved, would mean, “there would be no reason to contemplate an independent school

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<sup>31</sup> Section II above provides detailed discussion regarding the cumulative impact of prior separations in Jefferson County.

system.” *Id.* at 3. Approximately five years after the report, JCBOE built a new \$51 -million - dollar high school in Gardendale and the city council subsequently initiated the current attempt to separate.

Gardendale’s previous dalliances with separation also suggest the possibility that GBOE’s proffered reasons for separation are pretextual because the previous justifications offered for separation have been addressed by steps that are less disruptive to JCBOE’s desegregative obligations—such as finding additional funds to support the Gardendale schools, or raising concerns regarding the quality of schools in the city with the county board of education. Because Gardendale’s history makes clear that less segregative actions provide a viable path for GBOE to improve the quality of education at its schools, it is more likely that intentional discrimination may also play a part in GBOE’s desire to secede from JCBOE. *See Knight v. Alabama*, 476 F.3d 1219, 1221, n.3 (11th Cir. 2007) (holding that in the context of desegregation in higher education, that if the State is unable to show that the challenged policy has no continuing segregative effects, the State may nevertheless escape liability if the State shows that there are no less segregative alternatives which are practicable and educationally sound) (citation omitted); *see also Penick v. Columbus Bd. of Ed.*, 429 F. Supp. 229, 247 (S.D. Ohio 1977), *aff’d in part, remanded in part*, 583 F.2d 787 (6th Cir. 1978), *aff’d*, 443 U.S. 449 (1979) (finding that the racial balance at four schools could have been enhanced by redrawing the attendance zones for these four schools or by pairing and concluding that the actions of the defendants had a substantial and continuing segregative impact upon these four schools).

GBOE’s attempt to separate should also be viewed against the backdrop of the demographic changes occurring in Northern Jefferson County. Between 2005-2015, almost

every elementary zone in Northern Jefferson County has followed the same demographic pattern: the loss of white students and the addition of Black students. *See* Cooper report at 29. Over this time period, North Jefferson County has added 3,808 Black students and lost 4,710 white students. *See id.* Of 14 elementary zones in the region, only Gardendale has added more than 50 white students in that decade. *See id.* Read against that backdrop, GBOE’s efforts to separate, which picked up steam in 2005 and reached a critical mass in 2014, are less likely to be motivated by benign, nonracial concerns.

*C. GBOE’s Formation was a Departure from Normal Procedure.*

The inference that GBOE was partly motivated by racial concerns is also supported by its departure from the normal procedural sequence of events by attempting to achieve separation through a state court action and by its ‘eleventh hour’ inclusion of North Smithfield Manor and Greenleaf Heights residents into its plan.<sup>32</sup> *See Vill. Of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977) (“Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role... Substantive departures too may be relevant, particularly if the factors usually considered important by the decision-maker strongly

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<sup>32</sup> GBOE’s addition of North Smithfield and Greenleaf Heights is discussed in greater detail in Section III.

favor a decision contrary to the one reached.”) Thus, before GBOE could separate from the JCBOE, GBOE was required to come to this Court and establish that its separation plan did not hinder the process of school desegregation. *Wright v. Council of City of Emporia*, 407 U.S. 451, 460 (1972).<sup>33</sup> (“If the proposal would impede the dismantling of a dual system, then a district court, in the exercise of its remedial discretion, may enjoin it from being carried out.”)

GBOE, however, failed to follow proper procedures for obtaining federal court approval. State Superintendent Dr. Tommy Bice, in a final determination regarding the separation of GBOE from JCBOE, granted GBOE’s request for separation but unequivocally informed them that “this decision is subject to the United States District Court’s jurisdiction in *Stout v. Jefferson Bd. Of Educ.*... That court has the jurisdiction and authority to review and/or modify this office’s decision to ensure compliance with federal desegregation laws and orders of that court.”

(Doc.1003 at 3-4). On March 13, 2015, GBOE moved to intervene in the case stating “the Gardendale Board petitions hereby to intervene as a Defendant to demonstrate to the Court that the operations of the Gardendale Board will not adversely affect desegregation.” (Doc. 1002 at 3). In a vast departure from the normal practices of this litigation, four days after moving to intervene in this federal case, GBOE filed an action in state court seeking to have the issue of their separation resolved there. *See* (Doc. 1003). This court correctly enjoined that action and

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<sup>33</sup> Furthermore, as explained in Section III, GBOE’s “Answer” makes clear that it does not believe that this court’s jurisdiction in this matter is justified. Such flagrant disregard for the role of federal courts in school desegregation by GBOE raises serious concerns regarding its intention to comply in good faith to further desegregation.

subsequently approved GBOE's motion to intervene in this desegregation case. (Doc. 1003). The decision to initiate an action in state court along with GBOE's expression of what it believes to be its obligations under the Court order show a willingness to repeatedly seek to skirt its obligations in this matter.

GBOE's addition of the mostly Black communities of North Smithfield Manor and Greenleaf Heights was also unusual from a procedural perspective. Neither community was included in GBOE's initial separation plan. (Doc. 1001-9). Instead, GBOE modified its plan only after it joined this case as intervenors and was faced with the prospect of obtaining approval under the 1971 desegregation order. Furthermore, the process by which these communities were included in the school district is highly unusual. Both were added to the district without their consent or approval and were given no choice in the matter.

Because both communities are outside the Gardendale city limits, they have no representation on the Gardendale School Board, and their status can be changed at any time—including their removal from the district—by a Board that does not speak for, or answer to, them.

The proof of GBOE's discriminatory intent is also bolstered by the fact that GBOE's separation plan has an adverse disparate impact on Black students in Jefferson County that is both foreseeable and that lacks any plausible, race-neutral justification. The Supreme Court has held that "actions having foreseeable and anticipated disparate impact are relevant evidence to prove the ultimate fact, forbidden purpose," *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 464 (1979). Furthermore, "[i]f the impact of a governmental act cannot be plausibly explained on a neutral ground, impact itself would signal that the real classification made by the law [is] in fact

not neutral.” *United States v. Texas Ed. Agency*, 600 F.2d 518, 528 (5th Cir. 1979) (citing *Personnel Administrator v. Feeney*, 442 U.S. 256, 275 (1979)).

In *Burleson v. Cnty. Bd. of Election Comm'rs of Jefferson Cnty.*, the district court found that if the proposed district were permitted to secede from its parent district, the removal would “substantially increase the racial imbalance in the District's student bodies” by changing the parent district’s percentages from 55% Black and 45% white to 57% Black and 43% white. *Burleson v. Cnty. Bd. of Election Comm'rs of Jefferson Cnty.*, 308 F. Supp. 352, 356 (E.D. Ark.), *aff'd sub nom. Burleson v. Cnty. Bd. of Election Comr's of Jefferson Cnty.*, 432 F.2d 1356 (8th Cir. 1970). Here, similar to *Burleson*, GBOE secession would lead to a 3% increase in Black student residency percentage in JCBOE. *See Cooper Report* at. 34. Where such a reasonably foreseeable racial imbalance results from a school district’s policy choice, the Supreme Court has held that it may be considered an indicator of discriminatory intent. *See Columbus Board of Education v. Penick*, 443 U.S. 449, 465 (1979); *accord Dayton Bd. of Ed. v. Brinkman*, 443 U.S. 526, 536 n.9 (1979) (“[P]roof of foreseeable consequences is one type of quite relevant evidence of racially discriminatory purpose...”).

GBOE has also engaged in several acts that will have foreseeable, adverse disparate consequences. First, the Gardendale Plan, will require students who live in areas currently zoned for Gardendale schools to attend schools that are significantly more racially homogenous after the proposed transition period ends. For example, GBOE’s demographer proposed that students living in areas currently served by Gardendale schools might instead be rezoned into feeder patterns that ultimately send students to Corner High School, Fultondale High School, and Mortimer Jordan High School, all of which are either less racially diverse than Gardendale High



School or inferior to Gardendale High School in terms of facilities and course offerings. *See* Sachs Report at 12. An alternative plan would send some students displaced by the separation to a feeder zone that feeds into Minor High School--a school that is less racially diverse than Gardendale High School--instead of feeding into Corner High School. *Id.* at 14. For the 2015-16 school year, Minor High School had a student population consisting of 87% Black students and 13% white/other students; Gardendale High School was 27% Black and 73% white/other.<sup>34</sup>

GBOE plan will also create yet another predominantly white school district in Jefferson County, a result which can be reasonably anticipated based on the city of Gardendale's demographics. *See* Cooper Report at 15-16 (noting that according to the most recent census data, Gardendale has the lowest Black Under 18 population percentage of all attendance zones contiguous to the City of Birmingham); *see also* Cropper report at 5 (showing that the proposed Gardendale school district grade counts by race would be as follows: K-5 -- 25% Black, 75% White/Other; 6-8 -- 31% Black, 69% White/Other; 9-12 -- 29% Black, 71% White/Other). The prospect of an increasingly white school district is also foreseeable given the history of municipal separations in Jefferson County and the likelihood of future annexations by GBOE. *See* Cooper Report at 35-38.

*D. GBOE Lacks a Plausible Racially Neutral Justification for Its Separation.*

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<sup>34</sup> Student enrollment data taken from the expert report of Matthew Cropper at page 23.

Finally, the foreseeable disparate impact resulting from GBOE's plan to separate from JCBOE allows for an inference of discriminatory intent because GBOE lacks a plausible, neutral justification for the separation. *See United States v. Texas Ed. Agency*, 600 F.2d 518, 528–29 (5th Cir. 1979) (“If... the challenged acts ‘do not have a firm basis in well accepted and historically sound non-discriminatory social policy, discriminatory intent may be inferred from the fact that those acts had foreseeable discriminatory consequences.’”) (citing *United States v. Texas Education Agency (Austin Independent School District)*, 564 F.2d 162, 168 (5th Cir. 1977)).

GBOE has consistently failed to offer a legitimate rationale for wanting to separate from Jefferson County. GBOE board members have continuously expressed a desire for “local control” over the Gardendale schools in order to improve educational quality; however, beyond the empty, vastly unsupported claim that smaller, locally controlled school systems perform better than larger school systems, GBOE has failed to set forth exactly how its proposed smaller and locally-controlled school system will improve educational quality for students attending school in Gardendale. *See Segroves Dep.* at 26:8-28:24; *Salter Dep.* at 50:18-55:20; *Lucas Dep.* at 16:6-19:4, 27:2-30:10, 56:1-56:22. GBOE's lack of a valid explanation is even more troubling because the leaders of the proposed school system have been unable to explain what they intend to do differently than JCBOE or to identify problems that currently exist within Gardendale

schools under JCBOE control that the separation intends to solve.<sup>35</sup> Without more, GBOE's failure to provide an educational justification beyond empty claims for "local control" of schools in Gardendale, invites an inference that the decision to separate from JCBOE to form a predominantly white school district despite its foreseeable impact is at least in part motivated by a discriminatory purpose.<sup>36</sup>

While no one piece of evidence is determinative of the existence of discriminatory intent in GBOE's plan to separate from JCBOE, the totality of the evidence when analyzed under *Arlington Heights* and relevant desegregation law, presents an unmistakable inference that discriminatory intent played a part in official action by GBOE. Therefore, this court should deny GBOE's application to secede from JCBOE.

## V. Conclusion

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<sup>35</sup> Furthermore, a school board is not made powerless if secession is denied, as a school may still continue to operate its Board as an incorporated entity. (*Ross II* at 716) For instance, in *Ross II*, the Fifth Circuit found that while the splinter district of WISD was legally enjoined from separating due to its potential to further segregate the district and inability to support itself, it could still "maintain its corporate existence and pursue its organizational rights... that do not involve independent operation." (*Ross II* at 716). Thus, even though the GBOE is not entitled to separation from JSBOE, the Gardendale School Board is entitled to preserve its corporate entities and exist as an organization and exercise "local control in that manner." (*Ross II* at 716).

<sup>36</sup> At least one state court in Alabama has also identified the sometimes-deceptive nature and pretextual history of calls for "local control" of schools in the state. See *Alabama Coal. for Equity, Inc. v. Hunt*, No. CIV. A. CV-90-883-R, 1993 WL 204083, at \*63, n. 58 (Ala. Cir. Ct. Apr. 1, 1993) ("Further, although the Court agrees...that local control is presumptively a legitimate state interest, too often in Alabama local control has actually been synonymous with local discrimination.").

There is nothing new under the sun. GBOE's attempt to separate from JCBOE is merely the latest in a long history of acts of resistance to compliance with desegregation. For as long as federal courts have sought to protect the rights of students to learn in environments free from segregation, barriers to that effort have been erected in varying forms.

GBOE's proposed separation would impede the ability of JCBOE to meet its constitutional desegregation obligations, GBOE has not acted in good faith in complying with its desegregative obligations and moreover, GBOE's plan to separate is motivated, at least in part, by unlawful discriminatory intent. For those reasons, the Plaintiffs adamantly oppose the creation of a new splinter school system and respectfully request that this court deny GBOE's Motion.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that, on August 29, 2016, I served the parties listed below with a copy of this document by email:

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# Appendix A

**Table 1: Leeds, Trussville, and JCBOE Total Student Population 2003 to 2016**

School Year	Leeds	Trussville	JCBOE	JCBOE with Leeds and Trussville	Percentage Increase if Leeds and Trussville Included in JCBOE
2003/04	1,298	N/A <sup>1</sup>	38,659	39,957	+ 3.4%
2004/05	1,325	N/A	39,479	40,804	+ 3.4%
2005/06	1,336	4,157	35,834	41,327	+ 15.3 %
2006/07	1,382	4,069	36,290	41,711	+ 14.9%
2007/08	1,400	4,118	36,109	41,627	+ 15.3%
2008/09	1,431	4,116	36,174	41,721	+ 15.3%
2009/10	1,436	4,151	36,058	41,645	+ 15.5%
2010/11	1,566	4,181	35,860	41,607	+ 16.0%
2011/12	1,640	4,188	35,978	41,806	+ 16.2%
2012/13	1,776	4,233	36,068	42,077	+ 16.7%
2013/14	1,851	4,269	36,203	42,323	+ 14.5%
2014/15	1,837	4,292	36,003	42,132	+ 17.0%
2015/16	1,817	4,456	35,988	42,261	+ 17.4%

Student Enrollment Data from Alabama State Department of Education <sup>2</sup>

<sup>1</sup> Leeds began operating as a separate school system in 2003. Trussville began operating as a separate school system in 2005.

<sup>2</sup> The student enrollment data in these three tables is from the Alabama State Department of Education, available at <http://web.alsde.edu/PublicDataReports?Default.aspx>. For comparison and consistency purposes, the enrollment data submitted to the Alabama Department of Education is used for all three school districts. Because of a different reporting schedules, these figures may differ slightly from those in the JCBOE annual reports submitted to this Court each October.



**Table 2: Change in White Student Enrollment in JCBOE, Leeds and Trussville School Districts from 2003 to 2016**

School Year	Leeds County Schools		Jefferson County Schools			Trussville City Schools	
	# of students	Difference from previous year	Difference from previous year	# of students	Difference from previous year	Difference from previous year	# of students
03/04	805	N/A	N/A	26,770	N/A	N/A	N/A
04/05	845	+40	-730	26,040	-730	N/A	N/A
05/06	843	-2	-4,229	21,811	-4,229	N/A	3633
06/07	850	+7	-792	21,019	-792	+47	3680
07/08	834	-16	-755	20,264	-755	-132	3548
08/09	865	+31	-554	19,710	-554	+8	3556
09/10	873	+8	-728	18,982	-728	+70	3626
10/11	949	+76	-661	18,321	-661	+11	3637
11/12	1,000	+51	-451	17,870	-451	-22	3615
12/13	1,066	+66	-518	17,352	-518	+18	3633
13/14	1,078	+12	-574	16,778	-574	+7	3640
14/15	1,100	+22	-626	16,152	-626	-12	3628
15/16	1,102	+2	-523	15,629	-523	+113	3741
<b>Difference in white student population since 2005 to 2016</b>	<b>+349</b>		<b>-11,141</b>			<b>+108</b>	

Student Enrollment data from Alabama State Department of Education

**Table 3: Change in Black Student Enrollment in JCBOE, Leeds and Trussville School Districts from 2003 to 2016**

Race Year	Leeds		Jefferson County			Trussville	
	# of students	Difference from previous year	Difference from previous year	# of students	Difference from previous year	Difference from previous year	# of students
03/04	429	N/A	N/A	10,943	N/A	N/A	N/A
04/05	410	-19	+1390	12,333	+1390	N/A	N/A
05/06	408	-2	+528	12,861	+528	N/A	351
06/07	401	+7	+969	13,830	+969	+15	366
07/08	423	+22	+462	14,292	+462	+46	412
08/09	393	+30	+414	14,706	+414	-12	400
09/10	363	-30	+406	15,112	+406	-14	386
10/11	396	+33	+192	15,304	+192	+9	395
11/12	420	+24	+331	15,635	+331	-7	388
12/13	444	+24	+324	15,959	+324	+19	407
13/14	460	+16	+420	16,379	+420	+24	431
14/15	442	-18	+76	16,455	+76	+20	451
15/16	421	-21	+562	17,017	+562	+36	487
<b>Difference in black student population since 2005 to 2016</b>	<b>-8</b>		<b>+6,524</b>			<b>+136</b>	

Student Enrollment data from Alabama State Department of Education

# Appendix B

Plaintiff Exhibit B

Which path will Gardendale choose?

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

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

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

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

On which list will you place Gardendale?

# Appendix C

**SCOTT BEASON**

1	3
<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION</p> <p>CASE NUMBER: 2:65-CV-00396-MHH</p> <p>LINDA STOUT, et al., Plaintiffs, vs. UNITED STATES OF AMERICA, Plaintiff-Intervenor vs. JEFFERSON COUNTY BOARD OF EDUCATION, Defendant, GARDENDALE CITY BOARD OF EDUCATION, Defendant-Intervenor.</p> <p style="text-align: center;">VIDEOTAPED DEPOSITION OF SCOTT BEASON March 18, 2016</p> <p>REPORTED BY: J. Ashley Arrowood, CSR, RPR Henderson &amp; Associates Court Reporters 5 North Royal Street - Suite 200 Mobile, Alabama 36602</p>	<p style="text-align: center;">STIPULATIONS (Continued)</p> <p>IT IS FURTHER STIPULATED AND AGREED that it shall not be necessary for any objections except as to form or leading questions, and that counsel for the parties may make objections and assign grounds at the time of the trial, or at the time said deposition is offered in evidence or prior thereto.</p> <p>IT IS FURTHER STIPULATED AND AGREED that the notice of filing of the deposition by the Commissioner is waived.</p>
2	4
<p style="text-align: center;">STIPULATIONS</p> <p>IT IS STIPULATED AND AGREED by and between the parties through their respective counsel, that the deposition of SCOTT BEASON may be taken before J. Ashley Arrowood, Commissioner, at White, Arnold &amp; Dowd, 2025 3rd Avenue North, Birmingham, Alabama, on the 18th day of March, 2016.</p> <p>IT IS FURTHER STIPULATED AND AGREED that the signature to and the reading of the deposition by the witness is waived, the deposition to have the same force and effect as if full compliance had been had with all laws and rules of Court relating to the taking of depositions.</p>	<p style="text-align: center;">APPEARANCES</p> <p>APPEARING ON BEHALF OF THE PLAINTIFFS: NAACP Legal Defense &amp; Educational Fund, Inc. Ms. Monique N. Lin-Luse and Mr. Christopher Wilds 40 Rector Street, 5th Floor New York, New York 10006 -and- White, Arnold &amp; Dowd, P.C. Mr. U. W. Clemon 2025 3rd Avenue North Suite 500 Birmingham, Alabama 35203</p> <p>APPEARING ON BEHALF OF THE PLAINTIFF-INTERVENOR: U.S. Department of Justice Civil Rights Division Educational Opportunities Section Ms. Natane Singleton (via telephone) 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530</p>

**SCOTT BEASON**

5	<p>1 APPEARANCES (continuing:)</p> <p>2</p> <p>3 APPEARING ON BEHALF OF THE DEFENDANT:</p> <p>4 Bishop, Colvin, Johnson &amp; Kent, LLC</p> <p>5 Mr. Whit Colvin</p> <p>6 1910 1st Avenue North</p> <p>7 Birmingham, Alabama 35203</p> <p>8</p> <p>9 APPEARING ON BEHALF OF THE DEFENDANT-INTERVENOR:</p> <p>10 Adams and Reese, LLP</p> <p>11 Mr. Stephen A. Rowe</p> <p>12 1901 6th Avenue North</p> <p>13 Suite 3000</p> <p>14 Birmingham, Alabama 35203</p> <p>15</p> <p>16 ALSO PRESENT:</p> <p>17 Dr. Patrick Martin</p> <p>18 Mr. Joey Watson - Videographer</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	7
6	<p>1 INDEX</p> <p>2 PAGE:</p> <p>3 EXAMINATION BY MR. CLEMON: 9</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 INDEX OF EXHIBITS</p> <p>19</p> <p>20 Exhibit 1 9</p> <p>21 Exhibit 2 10</p> <p>22 Exhibit 3 29</p> <p>23</p> <p>24</p> <p>25</p>	8

1 I, J. Ashley Arrowood, CSR, RPR, a Court  
 2 Reporter and Notary Public of the State of Alabama,  
 3 acting as Commissioner, do certify that on this date,  
 4 as provided by the Alabama Rules of Civil Procedure  
 5 and the foregoing stipulation of counsel, there came  
 6 before me at White, Arnold & Dowd, 2025 3rd Avenue  
 7 North, Birmingham, Alabama, on March 18, 2016, beginning  
 8 at 1:54 p.m., SCOTT BEASON, witness in the above cause  
 9 for oral examination, whereupon the following  
 10 proceedings were had:  
 11 THE VIDEOGRAPHER: This marks the  
 12 beginning of Tape No. 1 in the deposition of Scott  
 13 Beason. We're on the record, 1:54 p.m., March 18th,  
 14 2016, in the matter of Stout v. Jefferson County Board  
 15 of Education, Case No. 2:65-CV-00396-MHH in the United  
 16 States District Court for the Northern District of  
 17 Alabama, Southern Division.  
 18 Would attorneys present please identify  
 19 who they represent?  
 20 MR. COLVIN: Whit Colvin for the  
 21 Jefferson County Board of Education.  
 22 MR. WILDS: Chris Wilds, legal fellow for  
 23 the plaintiffs.  
 24 MS. LIN-LUSE: Monique Lin-Luse for the  
 25 plaintiffs.

1 MR. CLEMON: U. W. Clemon for the  
 2 plaintiff.  
 3 MR. ROWE: Steve Rowe for Gardendale  
 4 Board of Education.  
 5 THE VIDEOGRAPHER: And by telephone?  
 6 MS. LIN-LUSE: Natane?  
 7 MR. ROWE: Natane Singleton for DOJ. I  
 8 mean, that's easy --  
 9 MS. SINGLETON: I am here now. I think  
 10 you previously muted yourself. And I can press my own  
 11 mute button --  
 12 MS. LIN-LUSE: Perfect.  
 13 MS. SINGLETON: -- so you won't hear  
 14 me --  
 15 MS. LIN-LUSE: Perfect.  
 16 MS. SINGLETON: -- okay?  
 17 MS. LIN-LUSE: Okay.  
 18 THE VIDEOGRAPHER: Would the court  
 19 reporter please swear in the witness?  
 20 THE COURT REPORTER: If you would, raise  
 21 your right hand.  
 22  
 23 SCOTT BEASON,  
 24 having been first duly sworn, was examined and testified  
 25 as follows:

SCOTT BEASON

9

1 EXAMINATION BY MR. CLEMON:  
2 Q. Good afternoon, Senator Beason.  
3 A. Judge, how are you?  
4 Q. I'm fine, thank you. You appear here  
5 this afternoon in -- in obedience to a subpoena that was  
6 served on you?  
7 A. Correct.  
8 Q. And prior to receiving the subpoena, did  
9 you receive a letter from the NAACP Legal Defense Fund  
10 which I'm going to offer as Plaintiff's Exhibit 1? And  
11 I'll just show it to you.  
12 (Whereupon, Exhibit 1 was  
13 marked for identification.)  
14 Q. (BY MR. CLEMON:) Did you receive this  
15 letter?  
16 A. I thought it came at the same time.  
17 Q. Okay. All right.  
18 A. I thought it came at the same -- I  
19 think they delivered it to me when they delivered the  
20 subpoena.  
21 Q. All right. And you've read it?  
22 A. Yes, sir.  
23 Q. And did you, pursuant to the terms of  
24 that subpoena, produce these documents which will be  
25 identified as Plaintiff's Exhibit 2?

10

1 A. Yes, sir, to the best of my ability.  
2 (Whereupon, Exhibit 2 was  
3 marked for identification.)  
4 THE WITNESS: You want me to keep them?  
5 MR. CLEMON: No. The court reporter  
6 will.  
7 THE WITNESS: Oh, okay.  
8 Q. (BY MR. CLEMON:) Senator, would you tell  
9 us your full name?  
10 A. Jason Scott Beason.  
11 Q. And what is your address?  
12 A. 1689 Quail Ridge Drive, Gardendale,  
13 Alabama.  
14 Q. Where were you born, Senator?  
15 A. Hartselle, Alabama.  
16 Q. That's in Morgan County?  
17 A. I couldn't tell you which county it's  
18 in. I mean, I was only there when I was born.  
19 Q. I see. Where did you grow up?  
20 A. I grew up in Gardendale. We moved to  
21 Gardendale when I was, I think, seven years old.  
22 Q. I see. And did you go to elementary  
23 school in Gardendale?  
24 A. I went to Gardendale Elementary School  
25 and started there as a third grader, and I graduated

11

1 from Gardendale in 1987.  
2 Q. Gardendale High School?  
3 A. Yes, sir.  
4 Q. All right. And you received a bachelor's  
5 degree in geology from the University of Alabama?  
6 A. Yes, sir.  
7 Q. That was in 1991?  
8 A. Yes, sir.  
9 Q. And did you -- did you have a job when  
10 you were in college?  
11 A. The job I had when I was in college is  
12 when I went to graduate school. I taught graduate  
13 Geology Lab, 101 Geology Lab, when I was doing --  
14 working on my master's.  
15 Q. I see. Did you get a master's?  
16 A. I did not finish. I took a job with  
17 Rust Environment & Infrastructure.  
18 Q. All right. And how long did you stay  
19 with Rust?  
20 A. Until -- my boss there started his own  
21 business, and I left with him. So I was in the  
22 environmental consulting business until fall of '97,  
23 maybe --  
24 Q. I see.  
25 A. -- something like that.

12

1 Q. And all this time you were living in  
2 Gardendale?  
3 A. Yes, sir. Well, we moved back. My  
4 wife and I got married and lived in Tuscaloosa. And  
5 then when I took a job at Rust, we moved back to  
6 Gardendale.  
7 Q. All right. And do you recall what year  
8 that was?  
9 A. No, sir. I could think about it, but  
10 it was '93, '94, something like that.  
11 Q. I see. What is your current occupation  
12 or profession?  
13 A. I host a radio show. I am the senior  
14 policy advisor called -- for a group called The  
15 Alabama Free Market Alliance. And then I do some  
16 consulting work. I have a little LLC.  
17 Q. All right. What is the Alabama  
18 consulting alliance?  
19 A. The Alabama Free Market Alliance is a  
20 small, little conservative economics group that  
21 promotes lower taxes, smaller government, that kind of  
22 thing.  
23 Q. I see. And how long have you had that  
24 business?  
25 A. They asked me to help them just a



**SCOTT BEASON**

13

1 little while after I got out of the senate. I say a  
 2 little -- probably -- yeah, after my term would have  
 3 ended in the senate.  
 4 Q. That would have been sometime in 2014?  
 5 A. Let's see. When did I get out? Yeah.  
 6 I would have ended in November of '14. So I probably  
 7 started with them in the spring of '15.  
 8 Q. I see. Do they have an office here in  
 9 Birmingham?  
 10 A. No. It's Paul Reynolds, it's his  
 11 group, and I think they just kind of do it as a -- as  
 12 their -- it's just one of the things they do.  
 13 Q. I see. Do you work out of your home?  
 14 A. Yes, sir.  
 15 Q. All right.  
 16 A. Well, for the most part, yes.  
 17 Q. All right.  
 18 A. I'm my own shop all the way around.  
 19 Q. Good. And you say you're a talk show  
 20 host?  
 21 A. Yes, sir.  
 22 Q. What radio station is that?  
 23 A. WYDE.  
 24 Q. And that's here in Birmingham?  
 25 A. The station itself is in Birmingham.

14

1 The tower is in Cullman.  
 2 Q. I see. And how often is that show aired?  
 3 A. From 11:00 to 1:00, five days a week,  
 4 Monday through Friday. And then I think they do a  
 5 rebroadcast of part of it on the weekend. I don't  
 6 even know when that is.  
 7 Q. Is this a call-in-type show?  
 8 A. Yes, sir. It's just a call-in talk  
 9 radio show.  
 10 Q. All right. And you say it's two hours?  
 11 A. It's two hours everyday. I do one hour  
 12 by myself, and then the second hour I do with the  
 13 gentleman who started the show, a gentleman named  
 14 Cliff Sims. And he comes in, and we do an hour  
 15 together.  
 16 Q. I see. And how long have you had the  
 17 show?  
 18 A. I've been doing the show since probably  
 19 early December of last year. It's really his. I just  
 20 am the host.  
 21 Q. I see.  
 22 A. He pays me.  
 23 Q. When did you get married?  
 24 A. Let's see. This is one of those  
 25 that'll get me in trouble. 1992.

15

1 Q. And what's your wife's name?  
 2 A. Lori, L-o-r-i.  
 3 Q. And does she work outside the home?  
 4 A. No. She's a stay-at-home mom.  
 5 Q. All right. And you have three kids?  
 6 A. I do.  
 7 Q. What are their names and ages?  
 8 A. Keller, who is 16; Merritt, who is 12;  
 9 and Mac -- McCalan, who is 9.  
 10 Q. All right. Keller is at Gardendale High?  
 11 A. He's at Gardendale High School. He's a  
 12 tenth grader.  
 13 Q. And Merritt?  
 14 A. She is a seventh grader at Bragg, which  
 15 is Gardendale's junior high.  
 16 Q. All right. And Mac?  
 17 A. Is a third grader at Gardendale  
 18 Elementary School.  
 19 Q. All right.  
 20 A. He goes to -- he and Merritt go to the  
 21 same buildings that I went to when I went to school.  
 22 Q. I see. When were you first elected to  
 23 the Alabama legislature?  
 24 A. 1998.  
 25 Q. And you were elected from a district --

16

1 the House of Representatives?  
 2 A. Yes, sir.  
 3 Q. What district was it?  
 4 A. I think that term it was 50.  
 5 Q. Well, yeah, the numbers sometimes change.  
 6 A. Right. Right. Right.  
 7 Q. So what area -- what area were you?  
 8 A. North Jefferson County.  
 9 Q. All right. And that would include  
 10 Gardendale?  
 11 A. It went from Gardendale to Clay.  
 12 Q. I see.  
 13 A. So I represented all of North Jefferson  
 14 County. Clay and Gardendale were my two biggest  
 15 municipalities.  
 16 Q. How long were you in the Alabama House of  
 17 Representatives?  
 18 A. Eight years, two terms.  
 19 Q. Did you chair any committees in the  
 20 House?  
 21 A. Not at that time. Republicans were  
 22 nowhere close to chairing committees. And I was new,  
 23 too, so --  
 24 Q. All right. And you were subsequently  
 25 elected to the Alabama Senate?

SCOTT BEASON

17

1 A. Yes, sir.  
 2 Q. When were you first elected to the  
 3 Alabama Senate?  
 4 A. 2006.  
 5 Q. All right. And what communities did you  
 6 represent as a senator?  
 7 A. That district was almost all of Blount  
 8 County. In Jefferson County it went from the Corner  
 9 area over there -- on 78 all the way across to  
 10 Clay/Trussville area, still my same House district,  
 11 and then half of St. Clair County.  
 12 Q. I see. But was Gardendale included --  
 13 A. Yeah, Gardendale was in there.  
 14 Q. -- in that central --  
 15 A. I think in my senate district -- the  
 16 first time I had some of Fultondale.  
 17 Q. I see. During your first term in the  
 18 Alabama Senate, did you hold any positions?  
 19 A. No, sir.  
 20 Q. And in the second term?  
 21 A. I did hold a position in the second  
 22 term.  
 23 Q. And what was that?  
 24 A. That was Rules.  
 25 Q. You were the --

18

1 A. I was Rules chairman for one year.  
 2 Q. -- chairman for one year? We're members  
 3 of the same club.  
 4 A. You got to stay there longer probably.  
 5 Q. And when did your position in the state  
 6 senate end?  
 7 A. I left in 2014.  
 8 Q. All right. Do you presently hold any  
 9 elective office?  
 10 A. No, sir. I'm recovering.  
 11 Q. All right. Do you, Senator, know the  
 12 members -- the present members of the Gardendale City  
 13 Council?  
 14 A. Yes, sir.  
 15 Q. All of them?  
 16 A. I know some of them better than -- than  
 17 others.  
 18 Q. Others, but you know all of them?  
 19 A. Uh-huh, I'm acquainted with all of  
 20 them.  
 21 Q. All right. Have you worked with -- with  
 22 them on various city matters during the time both when  
 23 you were a senator and now?  
 24 A. You know, they really never -- I  
 25 couldn't point to one specific thing that we worked on

19

1 a lot together.  
 2 Q. Yeah.  
 3 A. The district I represented, the cities  
 4 for the most part kind of tried to do their own thing.  
 5 Q. I see.  
 6 A. If they had a problem, I would try to  
 7 help them --  
 8 Q. I see.  
 9 A. -- as far as a big project or -- you  
 10 know, some -- some legislators were always being  
 11 called by their cities.  
 12 Q. Yeah.  
 13 A. But, I mean, I worked with them if they  
 14 needed me for something, if they called me and asked,  
 15 but I was not one of those to always be there saying,  
 16 hey --  
 17 Q. Yes. Who is the mayor of Gardendale?  
 18 A. Now it's Stan Hogeland.  
 19 Q. And how long has he been mayor?  
 20 A. Maybe a year.  
 21 Q. I see.  
 22 A. I don't even know when -- the former  
 23 mayor went to work for David Carrington in Jefferson  
 24 County.  
 25 Q. And who is that?

20

1 A. Othell Phillips.  
 2 Q. And how long was Mr. -- was Mayor  
 3 Phillips -- how long did he serve?  
 4 A. I couldn't tell you exactly.  
 5 Probably -- I don't know if he was re-elected once or  
 6 twice. So six to eight years.  
 7 Q. I see. And who was mayor before then?  
 8 A. Kenny Clemons.  
 9 Q. All right.  
 10 A. I think that's right. Yeah, I think  
 11 it's Clemons.  
 12 Q. All right. And did you from time to time  
 13 work with these mayors on problems that they came to see  
 14 you about in your capacity as their representative?  
 15 A. I cannot think of some -- a problem  
 16 that Gardendale had -- I think the only time -- I  
 17 can't think of a problem that they called and asked me  
 18 to fix.  
 19 Q. I see. I see. Are you a member of the  
 20 Gardendale Rotary Club?  
 21 A. I was a honorary member for a little  
 22 while.  
 23 Q. All right.  
 24 A. I'm not now.  
 25 Q. All right. Was that -- during the time

**SCOTT BEASON**

21

1 that you were honorary member, did you attend any of the  
 2 meetings?  
 3 A. Yeah, a couple.  
 4 Q. And as a senator, did you from time to  
 5 time speak at the rotary club?  
 6 A. If I was invited, I probably did, there  
 7 or the Chamber of Commerce, either one.  
 8 Q. All right. But they did invite you from  
 9 time to time?  
 10 A. I think so.  
 11 Q. Yeah. All right. Is it fair to say,  
 12 Senator, that you are a strong supporter of the  
 13 Gardendale schools and have been?  
 14 A. Yes, sir, since -- since -- since  
 15 before I was ever elected to the legislature.  
 16 Q. Yes, sir.  
 17 A. I was for a Gardendale School System  
 18 when I ran for the legislature in 1994. And I didn't  
 19 win, but I was for it way back then.  
 20 Q. All right.  
 21 A. And I was only 24 years old then.  
 22 Q. Now, you say you were for a Gardendale  
 23 School System. You mean at that time you felt that  
 24 Gardendale should have a separate school system?  
 25 A. Uh-huh.

22

1 Q. All right. And why is that? What was --  
 2 A. Well, I mean, I had just been out of  
 3 Gardendale for a few years. And if you just think  
 4 about the way things had always been run by the  
 5 county, from my point of view, even being a student,  
 6 was that everything required permission from somebody  
 7 else that you didn't even know.  
 8 I mean, there was a time -- and I don't  
 9 even know if it's the same way -- if you were hot in  
 10 the classroom or the school was hot, you had to ask  
 11 permission from downtown for them to turn the  
 12 air-conditioner on. All those kinds of things were  
 13 remotely done supposedly.  
 14 If you needed to have something fixed,  
 15 you had to call the county. If you needed to -- if  
 16 somebody wanted to borrow the gym for some kind of  
 17 event, you had to go down and ask the county. And I  
 18 always thought that it would be better for us to  
 19 manage our own thing.  
 20 Q. Yeah.  
 21 A. I mean, I can remember when the -- when  
 22 the school had to be painted. Now, this is the school  
 23 that was torn down.  
 24 Q. Yes, sir.  
 25 A. Needed to be painted, and Sherwin

23

1 Williams donates paint supposedly. Now, this is the  
 2 story. And, you know, there's no money to paint the  
 3 schools, so parents and coaches and dads, you know,  
 4 paint the school.  
 5 And then lo and behold, just a little  
 6 while later, some other school is getting painted with  
 7 taxpayer money. You're like, well, wait a minute.  
 8 Why are we painting it ourselves if there's money to  
 9 paint other places?  
 10 So, you know, it's that whole thing  
 11 that you can do better things in your town if you  
 12 don't have to go to somebody else and ask.  
 13 Q. It was sort of a matter of local control?  
 14 A. Yes, sir.  
 15 Q. All right. And have you, over the years  
 16 in your representative capacity in the House and Senate,  
 17 at various times contacted the state superintendent of  
 18 education about Gardendale education matters?  
 19 A. Trying to break away?  
 20 Q. Well, we'll come to that.  
 21 A. Okay.  
 22 Q. But even before then.  
 23 A. I can't think of ever contacting the  
 24 state --  
 25 Q. Okay.

24

1 A. -- the state superintendent about --  
 2 Q. How about Joe Martin when he was  
 3 superintendent?  
 4 A. I don't remember talking to Joe about a  
 5 Gardendale issue.  
 6 Q. Okay. And how about -- well, Tommy Bice  
 7 seceded him as superintendent?  
 8 A. He did.  
 9 Q. All right. Have you -- have you talked  
 10 with Mr. Bice about the separate school system for  
 11 Gardendale?  
 12 A. I don't believe he and I have  
 13 personally spoken about Gardendale School System.  
 14 Q. And --  
 15 A. I talked -- I just don't remember  
 16 talking to Tommy Bice.  
 17 Q. All right. Have you talked with someone  
 18 in his office about the Gardendale School System?  
 19 A. No. When I went trying to hope that we  
 20 could be able to break away, I talked to the governor.  
 21 Q. All right.  
 22 A. And then the governor got me to talk to  
 23 some staff person -- I don't even remember his name --  
 24 and then he was going to talk to him.  
 25 Q. All right. The governor got you to talk

SCOTT BEASON

25

1 with some staff person in the governor's office?  
 2 A. Uh-huh. It was an executive branch  
 3 person.  
 4 Q. All right. All right. So you've had no  
 5 direct contact with Tommy Bice about the formation of --  
 6 A. Not that I can recall --  
 7 Q. -- Gardendale being separate?  
 8 A. -- no, sir.  
 9 Q. All right. I think you've told us about  
 10 the kind of relationship that the Gardendale schools  
 11 have had with the Jefferson County schools over the  
 12 years.  
 13 A. Uh-huh. And -- well, I know I'm only  
 14 supposed to answer what you ask, but, you know, my  
 15 kids go to school there.  
 16 Q. Yes.  
 17 A. And -- and I see just -- you know, just  
 18 the things that I think we could do better as a school  
 19 system if -- if we were our own school system.  
 20 Q. I see.  
 21 A. I mean, a great example we're living  
 22 through right now -- and maybe this is not part of  
 23 what y'all are looking at. And I'm really not sure  
 24 what y'all are looking at. But my oldest son, who  
 25 just turned 16, is in an AP -- AP history class --

26

1 Q. Yes.  
 2 A. -- which the idea is to take the AP  
 3 test, and if you pass it, you get college credit.  
 4 Q. Right.  
 5 A. Well, Jefferson County is running block  
 6 schedule, which everything I read about education,  
 7 most places have quit doing block schedules a long  
 8 time ago. They went back to the old seven class  
 9 periods, and you take math all year.  
 10 Well, he takes AP history, the first  
 11 semester of it, this spring. He might have the second  
 12 semester next spring, which means the things he learns  
 13 in January of this year that are on that AP test --  
 14 Q. Yes.  
 15 A. -- are 15, 16 months before he tries to  
 16 take the test to get some college credit.  
 17 When I personally think if we were  
 18 doing it ourselves -- I mean, maybe that's giving too  
 19 much credit to other folks -- that those kinds of  
 20 things -- because you want kids to pass that AP test.  
 21 Q. Yeah.  
 22 A. And I just see -- and I was on the  
 23 education committee when I was in the House, so I used  
 24 to get all these -- all these letters and newsletters.  
 25 And this is what other states are doing, the Southern

27

1 Regional Education Board, and all these kinds of  
 2 things, and I'm comparing what works to what we do.  
 3 I'm like what is wrong?  
 4 Q. Yeah.  
 5 A. And to get that changed is like trying  
 6 to change a -- they don't care what I think in  
 7 Gardendale, Alabama. But I think if we had a system  
 8 closer to us where I could just say, "Patrick, what  
 9 are we doing," --  
 10 Q. Yeah.  
 11 A. -- he might have a good answer.  
 12 Q. Yeah. So you -- so --  
 13 A. It's just frustration.  
 14 Q. So you never felt that the Gardendale  
 15 citizens had a very productive relationship with the  
 16 Jefferson County Board of Education?  
 17 A. I didn't think it was near as good as  
 18 it could be.  
 19 Q. All right.  
 20 A. And it seems to be -- I remember I did  
 21 talk to -- I don't know if it was Mr. Morton or not.  
 22 But he was talking about -- told me one time -- it had  
 23 nothing to do with Gardendale, nothing.  
 24 And I think we were talking about some  
 25 of the larger -- the systems that were growing in

28

1 Alabama. And he might have just been speaking  
 2 somewhere, talking about how when you look across the  
 3 country, there are almost no systems that have over  
 4 10,000 kids that perform well. And it's partially  
 5 because the bureaucracy grows to such extent.  
 6 And my -- my feeling is that children  
 7 become numbers because they have so many and that I  
 8 think smaller systems care more about Scott or U. W.  
 9 or whoever.  
 10 Q. Yeah.  
 11 A. And that's -- that's my feeling.  
 12 Q. So you've had some concern about  
 13 education over some period of years?  
 14 A. Yes, sir.  
 15 Q. And you know that from time to time there  
 16 have been movements in Gardendale to set up a separate  
 17 school system?  
 18 A. Yes, sir.  
 19 Q. And one of those happened in 1999. Are  
 20 you familiar with that one?  
 21 A. I knew there was a report or a study at  
 22 one time but --  
 23 Q. Let me give you -- this is Plaintiff's  
 24 Exhibit 3.  
 25 A. I tried one time to actually get the

**SCOTT BEASON**

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1 report, but I don't think I ever got it.  
 2 (Whereupon, Exhibit 3 was  
 3 marked for identification.)  
 4 Q. (BY MR. CLEMON:) Well, look at it, and  
 5 see if that's --  
 6 A. Is this just the news story?  
 7 Q. Yes, that's the news story. -- whether  
 8 you've seen it before.  
 9 A. I don't believe I've seen this.  
 10 Q. Okay. All right.  
 11 A. Like I said, I tried to get the  
 12 official report one time. Do y'all have that?  
 13 Q. We're coming to that.  
 14 A. Okay.  
 15 Q. This is -- this is the --  
 16 A. Do y'all want me to read this?  
 17 Q. Yeah, why don't you look at it and see if  
 18 it -- it says --  
 19 A. I know I haven't seen -- I haven't seen  
 20 the article.  
 21 Q. -- if it says anything that you know to  
 22 be untrue.  
 23 A. Oh, God. That's asking a lot, Judge.  
 24 What year is this, '99?  
 25 Q. I take it that you -- you would have

30

1 agreed with the council's decision not to form a school  
 2 system back in 1999?  
 3 A. I would have. I was not politically  
 4 close to the leadership of the town at that time.  
 5 Q. All right. You are familiar with the  
 6 2005 report, aren't you?  
 7 A. I don't remember which is which.  
 8 Q. I'm sorry. That was a terrible -- that  
 9 was an inaccurate question.  
 10 You are familiar with the fact that in  
 11 2005 there was a study and report made by the education  
 12 committee of the city of Gardendale?  
 13 A. Is this the second time they studied  
 14 it?  
 15 Q. Yeah.  
 16 A. I don't think I had this report either  
 17 but --  
 18 Q. And that's not the complete report. It's  
 19 a -- it's a copy of it. But if you would, look at --  
 20 it's a copy -- I'm sorry. I'm sorry. That's -- that's  
 21 not the complete report. It is designated pages from  
 22 the report. And I can provide you --  
 23 A. Okay.  
 24 Q. -- the full report if you want it.  
 25 A. No, sir.

31

1 Q. But would you -- would you look at what  
 2 is numbered -- it's actually the fourth page of it.  
 3 A. Okay.  
 4 Q. Designated page 43.  
 5 A. Yes, sir. Got it. 43.  
 6 Q. And in the next-to-last paragraph, would  
 7 you read that one?  
 8 A. Starting with "If"?  
 9 Q. If, yes.  
 10 A. Okay. If forced to sum -- if forced to  
 11 sum this study in one recommendation, it would be it  
 12 is not the recommendation of this committee to form an  
 13 independent school system at this time. However, the  
 14 community should prepare to form one, ready to open in  
 15 the fall of 2011, in the event the Jefferson County  
 16 Board of Education is unable to meet the educational  
 17 expectations of the citizens of Gardendale.  
 18 Q. And were you aware that this  
 19 recommendation had been made?  
 20 A. At the time, no, sir.  
 21 Q. Yes. All right.  
 22 A. No, sir. I heard about this comment at  
 23 some time after that.  
 24 Q. All right.  
 25 A. Because this whole time, through both

32

1 of these studies, my response has always been --  
 2 because I -- personally I think it may have been the  
 3 first one -- and this is just me thinking --  
 4 Q. Yeah.  
 5 A. -- that the study was set out to come  
 6 to the conclusion of no --  
 7 Q. I see.  
 8 A. -- purposefully.  
 9 Q. Yeah.  
 10 A. It was going to be "no" no matter what  
 11 and -- in my opinion.  
 12 Q. And this would be the study that was  
 13 commissioned by the city council?  
 14 A. By the city.  
 15 Q. Yeah.  
 16 A. And I don't know -- maybe that was the  
 17 first one. And -- because my question always was if  
 18 you look at finances, the majority of finances for  
 19 school systems in our state, majority of it comes from  
 20 the State.  
 21 Q. Yeah.  
 22 A. And then you automatically are able to  
 23 get your portion from the county, which, unless  
 24 Gardendale was receiving more funds than it should  
 25 have been allotted based on per-pupil bases or

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1     however, then we would at least have the amount of  
 2     money that we were operating our buildings on already.  
 3     Q.    Yeah.  
 4     A.    So I never understood the argument of,  
 5     well, there's not enough money, there's not enough  
 6     money. Does that make sense?  
 7     Q.    Yeah.  
 8     A.    So --  
 9     Q.    Would you look at the last page?  
 10    A.    Oh.  
 11    Q.    And it identifies the committee members.  
 12    And I'm going to just ask you to review that and see if  
 13    you personally know any of these persons who served on  
 14    that committee.  
 15    A.    Now, is this that I know who they are  
 16    or that I know them at all?  
 17    Q.    Do you know them personally, do you know  
 18    them at all.  
 19    A.    Okay, if I know who they are. I got  
 20    it. Got it.  
 21    Q.    Lee Weinman, who is a chairperson.  
 22    A.    I'm supposed to. I recognize the name.  
 23    I wouldn't recognize the face.  
 24    Q.    You don't really know him personally?  
 25    A.    Is he the historic -- well, you

34

1     probably don't know.  
 2     Q.    I don't know.  
 3     A.    If he walked in and you told me it's  
 4     him, I probably would have talked to him. But it's  
 5     not somebody I would talk to on the phone.  
 6     Q.    Okay. Ron Becker?  
 7     A.    I do know Ron.  
 8     Q.    And how do you know him?  
 9     A.    He's been involved in school system  
 10    stuff all the time. He actually calls in to my radio  
 11    show.  
 12    Q.    All right.  
 13    A.    You know, he's been for me when I ran  
 14    for office before. I mean, I know him.  
 15    Q.    All right. Hazel Butts?  
 16    A.    I do know Hazel.  
 17    Q.    And in what connection?  
 18    A.    She's the crossing guard at the -- or  
 19    the head crossing guard lady at Gardendale. She's  
 20    real close to the former mayor and those people and --  
 21    Q.    All right.  
 22    A.    She's never been a big fan of mine.  
 23    Q.    All right. Bill Clemons? He's not  
 24    related to me.  
 25    A.    I do know who Bill is, yes. I know

35

1     Bill. He's the former mayor's brother. And I think  
 2     he's -- I think he's in my parents' Sunday School  
 3     class.  
 4     Q.    And you're a member of Gardendale Baptist  
 5     Church?  
 6     A.    Yes.  
 7     Q.    Okay.  
 8     A.    Which I've been a member of that church  
 9     since we moved to Gardendale also.  
 10    Q.    I see. Yeah. Yeah. Hamilton Fraser?  
 11    A.    Don't know him.  
 12    Q.    And Ann Getwan?  
 13    A.    I know who she is.  
 14    Q.    Ron Guin?  
 15    A.    I know Ronnie, uh-huh. He's --  
 16    Q.    How do you know him?  
 17    A.    He's -- he goes to my church. I guess  
 18    he still goes to my church. But he's always been a  
 19    big supporter of things at Gardendale High School.  
 20    And he's one of the guys that helps gather all the  
 21    memorabilia and that kind of stuff. He's kind of like  
 22    a high school historian person.  
 23    Q.    All right. Tracy Hacker?  
 24    A.    I know Tracy Hacker. I went to school  
 25    with Tracy Hacker.

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1     Q.    And has she been active in the education  
 2     efforts in Gardendale?  
 3     A.    I don't remember her being involved in  
 4     any of the -- this latest round. She's got a lot of  
 5     kids and adopted kids and -- so I'm sure she's busy.  
 6     Q.    All right. Diane Hollis?  
 7     A.    Somebody I probably should know but not  
 8     necessarily.  
 9     Q.    Kathleen Phillips?  
 10    A.    Kathleen Phillips. Kathleen Phillips.  
 11    Yes, I think I know Kathleen. Her son used to be in  
 12    school with -- I think that's her -- used to be in  
 13    school with my oldest son.  
 14    Q.    I see. Jack Sparks?  
 15    A.    I do know Jack Sparks. He used to work  
 16    for the county.  
 17    Q.    The county Board of Education?  
 18    A.    Uh-huh. I think a bunch of these  
 19    people actually used to work for the county or might  
 20    have been involved with the county Board of Education  
 21    at one time.  
 22    Q.    All right. And Dr. Sandy Thomas?  
 23    A.    Don't -- don't know her.  
 24    Q.    And Teresa Willis?  
 25    A.    Uh-huh, I know Teresa. I think she's a



SCOTT BEASON

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1 real -- was a real estate person in and around the  
 2 area.  
 3 Q. All right. Are you familiar with No  
 4 Child Left Behind Act?  
 5 A. Parts of it, yes, sir.  
 6 Q. Yeah. And what do you understand that to  
 7 be?  
 8 A. Something the federal government should  
 9 have never done. Depends which aspect you're --  
 10 Q. All right. All right.  
 11 A. I mean, I know it's federal  
 12 legislation --  
 13 Q. Yeah. Yeah.  
 14 A. -- that required the states to do a lot  
 15 of different things in its schools. It brought the  
 16 heavy amounts of testing. I don't know a lot of good  
 17 that it ever did, but it sounded good when it started.  
 18 Q. Yes. Have any of your Gardendale  
 19 constituents ever complained that there were too many  
 20 students in the Gardendale schools from Center Point?  
 21 A. I knew that at one time people were  
 22 talking about having -- you know, bussing people from  
 23 other places and that kind of stuff. But I never  
 24 heard that there were too many folks from Center  
 25 Point.

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1 I think our only overcrowded school  
 2 is -- is the elementary school which is one of the  
 3 questions I've never understood either, is we had Snow  
 4 Rogers, which it looked like enrollment was dropping.  
 5 And y'all probably looked at this. So I never  
 6 understood -- because my kids are in the elementary  
 7 school -- why it's packed to the gills. I think it's,  
 8 you know, overcapacity while we had other schools  
 9 right in our area that were undercapacity.  
 10 Q. Okay. I see. So you -- you have never  
 11 told any officials of the Jefferson County School Board  
 12 that some of your constituents were concerned about the  
 13 excessive Center Point -- Center Point students?  
 14 A. Only thing I've ever heard anybody say  
 15 that I can think about people from Center Point was  
 16 some people were asking or questioning some of the  
 17 disciplinary issues that were on the bus coming from  
 18 Center Point because one of the principals apparently  
 19 had to ride that bus from time to time.  
 20 Q. I see. All right.  
 21 A. But that's all I recall about a Center  
 22 Point effort.  
 23 Q. Yes, sir. Yes, sir. The question is:  
 24 Did you ever contact anyone at the county Board of  
 25 Education about that problem?

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1 A. I do not recall that. Who would I have  
 2 called to say that to, I mean, that we had too many  
 3 people from Center Point? I really don't.  
 4 Q. Well, do you --  
 5 A. If you can help me, I'll try to --  
 6 Q. Well, it probably would have been someone  
 7 in the superintendent -- the Jefferson County  
 8 superintendent's office.  
 9 A. I've never -- that I recall I've never  
 10 talked to anybody -- even when I talked to -- I think  
 11 the only superintendent I talked to down there is  
 12 Dr. Pouncey. And he was asking me about different  
 13 things. And if I brought anything up about Center  
 14 Point, as far as I know it would be about the fact  
 15 that we do have some issues at the elementary school.  
 16 But the only thing that I've ever heard  
 17 about Center Point that I could have relayed would be  
 18 the things about the problems with -- at the junior  
 19 high. But that's not the -- that's not the crowding  
 20 problem. So I'm trying to understand --  
 21 Q. All right. The problem with -- about  
 22 Center Point students at the junior high level, you  
 23 heard about that?  
 24 A. Yeah, only the thing about disciplinary  
 25 problems. But I don't recall having an issue with --

40

1 because I've been one of the people who has been  
 2 for -- I was for the Accountability Act. I'm for  
 3 people being able to go to better schools.  
 4 Q. Yeah.  
 5 A. So that's where I'm trying to  
 6 understand where we're going.  
 7 Q. So if -- if you talked with Dr. Pouncey  
 8 about Center Point students, it wasn't in connection --  
 9 A. Yeah. I don't even -- I don't remember  
 10 that conversation, but if you make it really clear to  
 11 me, I can help you.  
 12 Q. Well, I don't -- I wasn't there. I'm  
 13 just --  
 14 A. Right.  
 15 Q. -- asking.  
 16 But you're not denying that you may have  
 17 talked to him about --  
 18 A. I talked to Dr. Pouncey about hoping  
 19 that we can get out of the system for sure. And, you  
 20 know, what -- I don't know what he may have said that  
 21 we discussed so --  
 22 Q. But you have no recollection of talking  
 23 to him -- him or any other official of the Jefferson  
 24 County School Board about the problem of Center Point  
 25 students?

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1 A. No.

2 Q. Okay. All right. Are you familiar with

3 Focus?

4 A. Yes.

5 Q. What is Focus?

6 A. I don't remember what the acronym

7 stands for, but it was a group of people trying to

8 help form a Gardendale School System, or Gardendale

9 City School System.

10 Q. All right. Have you been a part of that

11 group?

12 A. I never joined, I wouldn't say, but I

13 tried to help them get the whole effort to get a

14 school system passed.

15 Q. All right. And have you --

16 A. I mean, I don't know what kind of thing

17 you have to be to be a member, but I --

18 Q. I see. Have you been to any of its

19 meetings?

20 A. I've met with the people, yes.

21 Q. And what people are you --

22 A. The people that did Focus? Segroves

23 and Salters and -- what's Chris's last name? I'm

24 drawing a blank.

25 Q. Would it have been Chris Brown?

42

1 A. No. Chris Brown is a political

2 consultant.

3 Q. Yeah.

4 A. Yeah. But, I mean, I know those people

5 who are part of Focus. Lucas.

6 Q. Chris Lucas.

7 A. Yeah.

8 Q. Yeah. And has your wife had any

9 involvement with Focus?

10 A. Yeah. I mean, I think we all were for

11 passing the school system.

12 Q. All right. And has she contributed money

13 to it?

14 A. I think we -- she probably did.

15 Q. And have you contributed personal funds

16 to it?

17 A. If she wrote the check, I'm sure we --

18 I don't always -- I don't always know --

19 Q. Indirectly?

20 A. -- what we contribute to, right.

21 Right.

22 Q. Directly or indirectly?

23 A. Right.

24 Q. But do you have any recollection of --

25 A. Probably.

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1 Q. -- your --

2 A. Probably.

3 Q. -- making a --

4 A. Yes, probably.

5 Q. And --

6 A. Well, I'm sure -- my recollection is

7 she thought we probably -- we should give some. And

8 if she did, I'm fine with that.

9 Q. All right. But you don't --

10 A. So I'll accept that we did.

11 Q. Do you -- do you have separate checking

12 accounts?

13 A. No.

14 Q. Okay.

15 A. I'd be killed for that, separate

16 checking accounts. But I'm -- you know, any way I

17 could support the movement, I'm sure that -- that I

18 did.

19 Q. All right. And you -- you gave them \$500

20 of your campaign money?

21 A. I think that's correct. It might have

22 been that same conversation.

23 Q. Pardon me?

24 A. That might have been part of the same

25 conversation, are we going to -- are we supporting it

44

1 so --

2 Q. What is your relationship with Chris

3 Lucas? I mean, is he a friend of yours?

4 A. Not before any of the Focus stuff.

5 Q. That's how you got involved with him?

6 A. That's how -- that's how I know him.

7 Q. Yeah.

8 A. I might have known him a little bit

9 before that. You know, you know a lot of people when

10 you're in office --

11 Q. Yeah. Yeah. Yeah.

12 A. -- just in passing.

13 Q. Yeah.

14 A. But that's when I would have been

15 around him more.

16 Q. And how about David Mowery?

17 A. David Mowery. I know David Mowery from

18 Montgomery.

19 Q. All right. Is he a member of the Focus

20 group, or does he live in Gardendale?

21 A. No, sir.

22 Q. Okay. Let me go back --

23 A. This is the big, tall David Mowery that

24 does political consulting.

25 Q. I see. Mr. Lucas sort of consulted with



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1 you with respect to how Focus should focus its  
 2 operations?  
 3 A. They asked me -- yeah. I mean, I guess  
 4 everybody who is ever involved in something political  
 5 in and around my area has always asked me something  
 6 about it, whether they were going to run for school  
 7 board or run for whatever. Somebody usually asks me  
 8 what I think about whatever is going on.  
 9 Q. And you and Mr. Lucas have talked about  
 10 this formation of the separate school system on more  
 11 than one occasion?  
 12 A. I'm sure, yes, sir.  
 13 Q. Who is Chris Brown?  
 14 A. Chris Brown is my former campaign  
 15 consultant.  
 16 Q. All right. Has he been -- does he live  
 17 in Gardendale?  
 18 A. No, sir, he does not.  
 19 Q. And has he provided any counseling or  
 20 advice to Focus or other groups in the Gardendale area  
 21 who were --  
 22 A. He did talk to Focus, yes, sir.  
 23 Q. All right. On more than one occasion?  
 24 A. I wasn't on the calls, but I would have  
 25 expected him to.

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1 Q. Yeah. Do you know whether he was hired  
 2 by them?  
 3 A. I think they did hire him.  
 4 Q. All right. To work on the --  
 5 A. The campaign.  
 6 Q. -- yes, the campaign to create a separate  
 7 school system?  
 8 A. Uh-huh. Because it was going to  
 9 require the vote of the people to pass a revenue  
 10 measure.  
 11 Q. All right. Now, might David Mowery also  
 12 have been consulted in connection with --  
 13 A. I don't know for sure about David. I  
 14 mean, I wasn't involved in the nuts and bolts of that  
 15 part. I just -- you know, other than telling them,  
 16 "You need to find somebody."  
 17 I don't remember how they ended up with  
 18 David. I would have -- I would have sent them to  
 19 Chris first because he had been my consultant.  
 20 Q. Yes.  
 21 A. So I don't even remember how they got  
 22 to David before they got to Chris.  
 23 Q. All right. Now, the Mount Olive  
 24 community was concerned about the proposed new  
 25 Gardendale --

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1 A. I do have a question.  
 2 Q. Yes, sir.  
 3 A. Can I go pay my meter again, or do you  
 4 think they're going to get me?  
 5 Q. They probably will get you. You can go  
 6 pay your meter again.  
 7 A. All right. Can we take a break?  
 8 Q. They get me regularly.  
 9 A. If you can't get me off, nobody can.  
 10 THE VIDEOGRAPHER: This marks the end of  
 11 Tape 1. Off the record, 2:35 p.m.  
 12 (Said deposition was in recess  
 13 at 2:35 p.m. until 2:49 p.m.,  
 14 after which the following  
 15 occurred.)  
 16 THE VIDEOGRAPHER: This is the beginning  
 17 of Tape No. 2. We're on the record, 2:49 p.m.  
 18 Q. (BY MR. CLEMON:) Senator, before the  
 19 break, we -- I had mentioned the Mount Olive situation  
 20 and the concern of some Mount Olive citizens about the  
 21 proposed new school system.  
 22 A. Yes, sir.  
 23 Q. And you're aware of those concerns?  
 24 A. Yes, sir.  
 25 Q. Tell us what -- what are they?

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1 A. Do you have a specific question?  
 2 Because I could tell you the whole Mount Olive story,  
 3 and we'll be here like a long, long time.  
 4 Q. Well, did you or didn't you sponsor some  
 5 annexation legislation?  
 6 A. I was ready -- I was ready to. I don't  
 7 remember if I ever filed it or not. And I guess I  
 8 could look -- I guess I could have the legislative  
 9 reference.  
 10 How do you explain Mount Olive? Okay.  
 11 Mount Olive and Gardendale, as far as I'm concerned,  
 12 from the time I was little have always been one place.  
 13 And my friends growing up lived in Mount Olive, we all  
 14 played ball together, we did all those things  
 15 together.  
 16 Once we got to junior high, the Mount  
 17 Olive Elementary kids came to Bragg, we were all there  
 18 together, and, you know, some of my best friends were  
 19 from Mount Olive.  
 20 When the school system thing came up,  
 21 the problem is --  
 22 Q. You mean the -- the Gardendale School  
 23 System --  
 24 A. The Gardendale School System effort --  
 25 Q. Yes. Yes.

SCOTT BEASON

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1 A. -- came up.

2 Well, you can only have a school system

3 inside your city limit sign -- lines, which

4 immediately causes a problem for the whole area, not

5 just Mount Olive, but the Brookside -- the northern

6 area of Brookside and those kind of places.

7 And when it all starting happening,

8 people from Mount Olive came to me and were saying,

9 "Well, we want to be part of it."

10 So the question is how do you get Mount

11 Olive into the city? The reason it was uncomfortable

12 is because you had some people in Mount Olive who

13 didn't want to be a part of the city, and they were

14 talking about conflicts between the Mount Olive area

15 and the city that happened back when I was a little

16 kid. And people were still mad about it.

17 And so there were people from Mount

18 Olive who not only didn't want to be in the city of

19 Gardendale, they didn't want a school system to

20 happen, they didn't want anything to happen. And they

21 started raising cane, coming up with whatever reason

22 they could come up with about why Gardendale shouldn't

23 be able to have a school system.

24 It didn't matter to them; they just

25 didn't want it to happen. And they were willing to

50

1 say whatever and do whatever. Now, that's -- that's

2 not really part of my part as a senator.

3 So the idea was, all right, how do we

4 try to get -- how do we give people an option to do

5 it? And one of my ideas, well, let's figure out just

6 how to have a vote. Let the people of Mount Olive

7 vote, and if they vote to come in the city of

8 Gardendale, that solves our problem.

9 Well, that sounded like a good idea

10 except that upper Mount Olive area is a fire

11 district -- part of a fire district. And the people

12 who run the fire district didn't want that to become

13 part of Gardendale. And because of our state law, you

14 have that issue with the six years back-fire dues and

15 all that kind of stuff.

16 So, well, my first thought was, well,

17 we can -- if they vote and if it passes -- which I

18 think most people would have voted for it, I think --

19 they would come into the city. And then we've got the

20 problem with the fire dues.

21 And I -- part of the reason I

22 remembered that was some of the people -- and I can't

23 give names. It's kind of like people talking about

24 the establishment, you know, who all these folks

25 necessarily are.

51

1 But then they were saying, "Well, that

2 won't be fair because we're paying 10 mills for a fire

3 district, and we'll be paying 10 mills for the

4 school."

5 Well, the city of Gardendale said they

6 couldn't -- couldn't afford to buy the whole fire

7 district out.

8 Q. Yeah.

9 A. And then they were saying, you know,

10 "We'll sue because now we're being unequally taxed,

11 and part of the city will be under a full-time fire

12 district, part of them won't be."

13 And so every time there was some option

14 of how to make this work, somebody came on and said,

15 "We'll sue somehow, some way."

16 So like every angle we tried, even -- I

17 think one of the city council members came up with

18 this -- a tax district, and they could be -- have a

19 tax district to help pay that part and all that kind

20 of stuff.

21 But Mount Olive was the only place

22 where people came and said, "Hey, look, we want to be

23 a part of this."

24 And then a friend of ours that lives in

25 a part of Brookside, he wanted to figure out how to

52

1 get in Gardendale. He does the sound stuff and stuff

2 for all the little events where you try to raise money

3 for the PTA and everything.

4 Q. Who is that?

5 A. What is Thomas' last name? It's

6 Thomas. I don't remember his last name. My wife

7 would remember. He's just Thomas to me.

8 And so the whole Mount Olive thing --

9 so I go out there, I'm trying to offer them a vote of

10 the people. The people who don't want to be a part of

11 the city are just raising cane. And it was just not

12 good politically. But I was willing to try it if

13 that's what we went to. But then the city came along

14 and said, "We can't even afford them."

15 And I had told the city, "Well, if you

16 can't afford it, I'm not going to force it" --

17 Q. Yeah.

18 A. -- even though at one time I

19 probably -- you know, I would have been interested in

20 trying to fix it legislatively. But I thought the

21 best way to do it was try to let them vote. And that

22 never -- never occurred.

23 Q. So that just didn't work out?

24 A. No.

25 Q. And so -- and you know that a lot of the

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1 parents in Garden -- in Mount Olive are dissatisfied at  
 2 the fact that they would no longer be -- their kids  
 3 would no longer be in Gardendale schools after this  
 4 13-year transition period?  
 5 A. Well, I would hope their kids graduate  
 6 but -- if they're already in there, 13 years, they'd  
 7 have time to graduate. But the area wouldn't be in  
 8 the school system anymore.  
 9 Q. Yeah.  
 10 A. Right.  
 11 Q. But the ones who have kids who are two,  
 12 three years old --  
 13 A. Yeah. I don't know what the -- well, I  
 14 can't look at him. But I don't remember what the  
 15 offer was. I thought it was -- I thought siblings  
 16 were included, but I don't -- I don't remember --  
 17 Q. I see.  
 18 A. -- for sure.  
 19 Q. Yeah.  
 20 A. To make sure, which I thought was a  
 21 pretty good idea -- I mean, you've got to trans --  
 22 you've got to figure out how to make this happen some  
 23 way. But that's why I still thought the best thing to  
 24 do was try to give those -- those places that are  
 25 already in the system, no matter where they are, an

54

1 option if they wanted to come in the city because you  
 2 can't just let people go without paying part of the  
 3 taxes.  
 4 Q. Yes.  
 5 A. Because that was the whole thing. I  
 6 mean, that was the political campaign, was how do you  
 7 convince people in one of the most conservative places  
 8 in the world, maybe, to raise taxes on themselves --  
 9 Q. Yeah.  
 10 A. -- which was, you know --  
 11 Q. Insofar as you know, Gardendale does not  
 12 intend to allow anyone who doesn't live in the city --  
 13 A. I don't know. I don't know -- I don't  
 14 know what the transfer thing is. I know a lot of  
 15 people were talking about doing something similar to  
 16 what other systems do where you pay some kind of  
 17 tuition or transfer fee or -- I don't know. I don't  
 18 remember what that policy was.  
 19 Q. I see. Yeah. Yeah. Yeah.  
 20 A. Those things are outside of what --  
 21 anything I had anything to do with.  
 22 Q. I see. You mentioned that you know  
 23 Mr. Salters?  
 24 A. I do know David Salters.  
 25 Q. And where does he live?

55

1 A. I believe he lives in Gardendale.  
 2 Q. In Gardendale. Is that an area that was  
 3 once in Mount Olive, or did he move into Gardendale?  
 4 A. I don't know. I didn't really know  
 5 David until this stuff started.  
 6 Q. That's around 2012, '13?  
 7 A. Whenever the campaign was, yes, sir.  
 8 Q. Yeah. Yeah. Yeah.  
 9 A. So I don't know if he moved. I think  
 10 Chris Lucas moved, but I don't know if Salters lived  
 11 in somewhere else and moved or not.  
 12 Q. I see. All right.  
 13 A. I've lived in Gardendale forever. And  
 14 one of the reasons my wife and I -- which is why some  
 15 of this stuff bothers me, is that my wife and I made a  
 16 decision to live in Gardendale city limits hoping that  
 17 one day we would figure out how to have a Gardendale  
 18 City School System.  
 19 And my friends, the people who grew up  
 20 with me, the folks who didn't move away, you know,  
 21 they had to ask themselves do I buy an older home in  
 22 Gardendale that's smaller and try to fix it up and all  
 23 that kind of stuff, or do I build a new home right  
 24 outside Gardendale and either go -- still go to  
 25 Gardendale or go to Jordan or Corner or wherever?

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1 And that's been part of the whole thing  
 2 I think a lot of people miss on this school system  
 3 thing, is there is an economic impact. You know, we  
 4 are a very old -- older community because the kids  
 5 grow up and move down 280, move to Hoover, move  
 6 somewhere. Their parents stay in Gardendale.  
 7 And then when the parents pass away,  
 8 there's nobody -- why do you buy an older home in  
 9 Gardendale? And the selling point for other cities is  
 10 because we've got really good schools. Bring your  
 11 kids here, bring -- you know, and it'll be great. But  
 12 we can't make that argument.  
 13 Q. Well, haven't -- haven't there been some  
 14 developments -- residential developments in Gardendale?  
 15 A. Yeah. Yeah. I mean, we've done  
 16 okay --  
 17 Q. Yeah.  
 18 A. -- through the years.  
 19 But the old neighborhoods like I grew  
 20 up in, you know, their home values and stuff like that  
 21 haven't -- haven't grown.  
 22 Q. Yeah.  
 23 A. And part of it is why do you do it?  
 24 I had some friends -- what are their  
 25 names? They moved away. They moved to Nashville. I

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1 say "friends." We knew them because my kids were on  
 2 the soccer team with them.  
 3 And when they moved back to -- they  
 4 came back down here, got transferred back. And they  
 5 had relatives that live in Blount County. So they  
 6 wanted to live in Gardendale because it would be quick  
 7 to go to their relative's in Hayden.  
 8 And so the wife says, "Well, you know,  
 9 why don't we look at the school thing?"  
 10 So they get on the Internet, and they  
 11 research how good the schools are. They move to  
 12 Shelby County. And when you look on these things and  
 13 it says, you know, this school here on the south side  
 14 of town is great, it's got a great ranking, and then  
 15 our score is not very good, people are just looking --  
 16 I mean, those were people who lived there who moved  
 17 away.  
 18 And people forget all that kind of  
 19 stuff. I mean, part of that whole effort was to  
 20 give -- be a growth engine to keep the city  
 21 prospering, or try to keep the city prospering. I  
 22 mean, I grew up there. I just --  
 23 Q. You live, I take it, in one of the newer  
 24 subdivisions?  
 25 A. I do. I live up by the -- up by the

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1 old golf course.  
 2 Q. Yeah.  
 3 A. And -- but it's on the -- I don't know  
 4 how familiar you are with Gardendale, but I live in  
 5 the New Castle area.  
 6 Q. Yeah. Do you -- do you know the  
 7 community called North Smithfield Manor?  
 8 A. I do. I do.  
 9 Q. And how far is that from Gardendale?  
 10 A. I don't know. I just know you go down  
 11 the interstate right there. It's on -- it's on the  
 12 other side of Fultdonale.  
 13 Q. I see. Did you ever propose a vote of  
 14 the North Smithfield Manor area?  
 15 A. No. And no one ever contacted me from  
 16 there. And I wasn't the senator from there.  
 17 Q. All right.  
 18 A. Which I'd be cool with that. I mean,  
 19 like I said, anybody inside the -- that was going to  
 20 Gardendale I would love to have the opportunity, but  
 21 you've got to be part of Gardendale.  
 22 Q. Yeah. Yeah.  
 23 MR. CLEMON: That's all I have.  
 24 THE WITNESS: If you'd have told me that,  
 25 I wouldn't have gone down and done the meter.

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1 THE VIDEOGRAPHER: Any other questions by  
 2 phone?  
 3 MR. COLVIN: I don't have any questions.  
 4 MR. ROWE: No questions. Thank you,  
 5 Senator.  
 6 THE VIDEOGRAPHER: This marks the end of  
 7 Tape No. 2 and concludes the deposition. We're going  
 8 off the record, 3 o'clock p.m.  
 9 (Deposition concluded at 3:00 p.m.)  
 10  
 11 FURTHER THE DEPONENT SAITH NOT  
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1 C E R T I F I C A T E  
 2  
 3 STATE OF ALABAMA)  
 4 JEFFERSON COUNTY)  
 5  
 6 I hereby certify that the above proceedings  
 7 were taken down by me and transcribed by me using  
 8 computer-aided transcription, and that the above is a  
 9 true and correct transcript of the said proceedings  
 10 given by said witness.  
 11  
 12 I further certify that I am neither of counsel  
 13 nor of kin to the parties to the action, nor am I in  
 14 anyway interested in the result of said cause.  
 15  
 16 I further certify that I am duly licensed by  
 17 the Alabama Board of Court Reporting as a Certified  
 18 Court Reporter as evidenced by the ACCR number found  
 19 below.  
 20  
 21 COMMISSIONER - NOTARY PUBLIC  
 22  
 23  
 24 J. ASHLEY ARROWOOD, CSR, RPR  
 25 ACCR #480 - Exp. 9/30/2016

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