THE *DILLARD* CASES AND GRASSROOTS BLACK POLITICAL POWER

JEROME GRAY* & JAMES U. BLACKSHER**

The Voting Rights Act may have had its greatest impact on Alabama through the so-called *Dillard* cases. What began as *Dillard v. Crenshaw County*[1] became a statewide defendant class action alleging that the use of at-large elections in 192 political subdivisions from sixty-one of Alabama's sixty-seven counties violated Section 2 of the Voting Rights Act as it was amended in 1982.[2] The legal proceedings in *Dillard* have already been recounted in several publications.[3] The

* Jerome Gray served as state field director for the Alabama Democratic Conference ("ADC"), Alabama's black political caucus, for twenty-seven years, before retiring in 2006. A native of Evergreen, Alabama, Gray graduated from Conecuh County Training School in 1955. He earned undergraduate degrees from Talladega College and Bishop College in Biology and English, taught school, and was a college textbook salesman before attending graduate school at Stanford University, studying creative writing on a Ford Foundation Fellowship. Gray returned to Alabama in 1976 and began his work with ADC strengthening county units throughout the state. He is nationally recognized as one of the most knowledgeable practitioners of politics in Alabama. Former Congressman Glenn Browder has called Gray a genuine "unsung hero" of the civil rights movement. Fittingly, Gray's motto is: "Be like a termite, work quietly but effectively from within."

** James Blacksher, a native of Mobile, attended the University of Utah on a Navy scholarship. He spent six years on active duty before attending law school at the University of Alabama, where he graduated in 1971. After a year clerking for U.S. District Judge Frank McFadden, Blacksher joined Vernon Z. Crawford's law firm in Mobile, where he practiced for seventeen years until moving to Birmingham in 1988. In addition to representing African Americans in employment discrimination, K–12 school desegregation, and voting rights cases, Blacksher represented the plaintiffs in the Alabama higher education desegregation case, *Knight & Sims v. Alabama*, which began in 1981 and ended in 2006. He currently represents the *Alabama Legislative Black Caucus* plaintiffs in the pending legislative redistricting case.

[1] (*Dillard I*), 640 F. Supp. 1347 (M.D. Ala. 1986).

[2] *See* Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 52 U.S.C. §§ 10301–10314 (2012)) (formerly codified in various sections of Title 42).

[3] *E.g.*, Peyton McCrary, *Minority Representation in Alabama: The Pivotal Case of Dillard v. Crenshaw County*, *in* DIXIE REDUX: ESSAYS IN HONOR OF SHELDON HACKNEY (Raymond Arsenault & Orville Vernon Burton, eds. 2013); Peyton McCrary et al., *Alabama*, *in* QUIET REVOLUTION IN THE SOUTH; THE IMPACT OF THE VOTING RIGHTS ACT, 1965–1990, at 38–66, 397–409 (Chandler Davidson & Bernard Grofman eds., 1994); James Blacksher et al., *Voting Rights In Alabama: 1982–2006*, 17 S. CAL. REV. L. & SOC. JUST. 249, 259–67 (2008); Pamela S. Karlan, *Maps and Misreadings: The Role of Geographic Compactness in Racial Vote Dilution Litigation*, 24 HARV. C.R.-C.L. L. REV. 173, 241–43 (1989); Richard H. Pildes & Kristen A. Donoghue, *Cumulative Voting in the United States*, 1995 U. CHI. LEGAL F. 241 (1995); Edward J. Sebold, *Applying Section 2 of the Voting Rights Act to Single-Member Offices*, 88 MICH. L. REV. 2199, 2208–10

purpose of this article is to describe how African Americans organized at the grassroots, primarily through the Alabama Democratic Conference ("ADC"), to initiate and then prosecute to successful conclusion under the Voting Rights Act a statewide project of providing black Alabamians an equal opportunity to elect candidates of their choice to local governments.

In 1960, before Congress passed the Voting Rights Act, only 13.7% of voting age blacks were registered to vote in Alabama,[4] and in 1965 there were only six black elected officials anywhere in the state.[5] By November 1985, when the *Dillard v. Crenshaw County* litigation began, black voter registration had risen to 71%,[6] but there were only thirty-eight black county commissioners, forty-seven black school board members, and 179 black city council members.[7] Four years later there were seventy-one black county commissioners, eighty-six black school board members, and 398 black city council members in Alabama.[8] In the Preface to the 1989 Roster, Eddie Williams, president of the Joint Center for Political Studies, noted how the growth rate among black elected officials at the national level nearly tripled from what it was the year before. He attributed much of that growth to the 252 newly elected black officials in Alabama following the *Dillard* case.[9] By the year 2000, black elected officials had achieved close to representational parity on county commissions, county school boards, and city councils in Alabama,[10] reflecting the

(1990).

[4] David A. Bositis, Joint Center for Political and Econ. Studies, African Americans and the Voting Rights Act: The Political Perspective, 1965–2005, at 12 (paper on file with authors).

[5] In 1965, Hobson City in Calhoun County had a black mayor and five black council members. Jerome Gray interview with Alberta McCrory, Mayor, Hobson City, Ala. (Nov. 2, 2015). Claire M. Wilson, *Hobson City*, ENCYC. OF ALA., http://www.encyclopediaofalabama.org/article/h-3245 (last visited Jan. 20, 2016) ("When the town was officially incorporated on August 16, [1899,] it was only the second municipality in the United States governed entirely by African Americans (the first being Eatonville, Florida, childhood home of Zora Neale Hurston.)."). *But see* Joe A. Mobley, *In the Shadow of White Society: Princeville, a Black Town in North Carolina*, 1865–1915, 63 N.C. HIST. REV. 340 (1986) (examining the history of Princeville, North Carolina—one of several "self-segregated," all-black communities that emerged during Reconstruction).

[6] JOINT CENTER FOR POLITICAL STUDIES, NATIONAL ROSTER OF BLACK ELECTED OFFICIALS 23 (1985).

[7] *Id*. at tbl.4.

[8] JOINT CENTER FOR POLITICAL STUDIES, NATIONAL ROSTER OF BLACK ELECTED OFFICIALS 14 (1989).

[9] *Id*.

[10] Jerome Gray, Black Elected Officials State Roster, Alabama Democratic Conference, 1999–2000, at 3 tbl.2.

black voting age population of 22.7% in the state. Alabama may be the only state in the nation today that can make that claim.

By 2010, when the last *Dillard* cases were dismissed, there were 757 black local elected officials.[11] In the legislature there were twenty-seven majority-black House districts and eight majority-black Senate districts, but there were no African Americans elected to statewide office. Blacks have been elected in single-member districts to the legislature and State Board of Education, but Oscar Adams, elected to the Alabama Supreme Court in 1982 and 1988, and Ralph Cook, elected to the Alabama Supreme Court in 1994, are the only African Americans ever to be elected to statewide office in Alabama history.[12] Today, black political power still has its greatest influence at the local levels of government.

HOW IT BEGAN

The *Dillard* project actually got underway after the United States Supreme Court's disappointing decision in *City of Mobile v. Bolden*,[13] which held that, in order to obtain relief under the Fourteenth and Fifteenth Amendments, plaintiffs must prove intentional discrimination behind the method of electing members of a local governing body. James Blacksher, Larry Menefee, and Edward Still were attorneys for the Bolden plaintiffs, and, with help from Gerald Hebert and the Department of Justice, they set out on remand to prove that Mobile's election system was purposefully adopted and maintained to dilute black voting strength. Based on testimony by Southern historians Peyton McCrary of the University of South Alabama, Morgan

---

[11] David A. Bositis, Black Elected Officials, 1970–2010 (paper on file with authors). The *Dillard* cases can also be credited with producing a significant increase in the number of black and white female candidates for local offices. Prior to *Dillard*, no black women had served on the county commissions or school boards in any of the defendant class jurisdictions. Black women have since served on the Elmore, Etowah, and Russell County Commissions, and on school boards in Autauga, Bibb, Chilton, Crenshaw, Elmore, Fayette, Hale, Houston, Limestone, Montgomery, Pickens, Pike, Randolph, Russell, Talladega, Tallapoosa, Tuscaloosa, and Washington counties. Since 1988, black women have been elected to city council seats in almost half of the *Dillard* municipalities.

[12] Justice Adams was appointed to the Alabama Supreme Court by Governor Fob James in 1980, and twice won re-election. *See* J. Mark White & Kitty Rogers Brown, *Oscar William Adams, Jr.*, ENCYC. OF ALA., http://www.encyclopediaofalabama.org/article/h-3138 (last visited Jan. 20, 2016). When Justice Adams retired in 1993, Governor James appointed another African American, Ralph Cook, to succeed him. *Id.* Justice Cook was re-elected in 1994 but was defeated in 2000. *Id.* Another African American, John H. England, Jr., was appointed to the Supreme Court by Governor Don Siegelman in 1999, but subsequently defeated by a white candidate in 2000.

[13] 446 U.S. 55 (1980).

Kousser of the California Institute of Technology, and Jerrell Shofner of the University of Central Florida, in a decision published on April 15, 1982, District Judge Virgil Pittman made findings of fact that traced the evolution of Mobile's election systems from Reconstruction to the 1911 adoption of a commission form of government and all the way to the time of the trial. Judge Pittman concluded that the at-large method of election had the purpose and effect of minimizing the voting strength of black citizens, and he reinstated his order requiring Mobile to adopt single-member districts.[14]

Meanwhile, ADC had also swung into action. Between 1980 and 1982, ADC coordinated three major marches and rallies in Selma, Birmingham, and Montgomery to "Save the Voting Rights Act and Amend Section 2." The marches and rallies attracted thousands, as well as the national media. Among the luminaries who attended were John Lewis, Coretta Scott King, Don King, Dick Gregory, Andrew Young, Jesse Jackson, Al Sharpton, and Congressman Don Edwards of California, Chairman of the House Judiciary Subcommittee on Civil and Constitutional Rights.

In addition to the marches, ADC succeeded in getting House Judiciary Committee Chairman Peter Rodino of New Jersey to hold an all-day field hearing in Montgomery on June 12, 1981, to hear testimony from Alabama leaders regarding whether the Voting Rights Act should be extended and amended.[15] Six ADC members from urban and rural counties gave testimony at the field hearing: 1) Dr. Joe Reed, ADC Chairman; 2) Dr. Richard Arrington, Mayor of Birmingham; 3) Prince Arnold, Wilcox County Sheriff; 4) Michael Figures, State Senator from Mobile; 5) Larry Fluker, President, Conecuh County NAACP; and 6) Maggie Bozeman, President, Pickens County NAACP. Jerome Gray assisted Ms. Althea T. L. Simmons, NAACP Washington Bureau Chief, in editing and preparing the typed copies of each witness' statement. The biggest surprise from the field hearing came when Congressman Henry Hyde of Chicago,[16] who had opposed amendments to the Voting Rights Act, became a supporter after hearing the testimony of the Alabama witnesses.[17] When Hyde returned to Washington, he wrote an op-ed in *The Washington Post* ti-

---

[14] Bolden v. City of Mobile, 542 F. Supp. 1050 (S.D. Ala. 1982).

[15] Thomas M. Boyd & Stephan J. Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History*, 40 WASH. & LEE L. REV. 1347, 1357 (1983).

[16] Another Chicagoan, Harold Washington, an early supporter of amending the Voting Rights Act, served on the House Subcommittee and attended the field hearing. In 1983, he was elected the first black Mayor of Chicago.

[17] Boyd & Markman, *supra* note 15, at 1362.

tled "Why I Changed My Mind About the Voting Rights Act."[18] In hearings back in D.C. on June 24, the Subcommittee heard testimony from historians and voting rights lawyers, including Kousser and Blacksher.[19] On June 29, 1982, President Reagan signed the Voting Rights Amendments of 1982, which amended Section 2 to make unlawful any voting practice "which *results* in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color [or membership in a language minority group]," whether or not there is proof of purposeful discrimination.[20]

Most observers of the *Dillard* case are probably unaware of ADC's nascent strategy of linking the voting rights marches it sponsored and the Congressional field hearing it secured on voting rights to its overarching, longstanding agenda of achieving election reform and fair representation for blacks. Long before the first *Dillard* lawsuit was filed in 1985, the Alabama Democratic Conference had considered and discussed in its meetings how it could attack at-large election systems in some collective way. ADC leaders expressed growing frustration and impatience over the inability of black voters to elect more black candidates of their choice. By 1978 ADC leaders were acutely aware of how black voter registration rates had increased significantly throughout the state since the passage of the 1965 Voting Rights Act. They could see, too, how black voters often helped elect many white candidates of choice they endorsed, but not their black candidates of choice. Correcting this unsettling disparity became a burning issue with ADC. It initiated an election-watch, document-collection, and record-keeping program that mobilized local leaders throughout the state. They meticulously collected information about all local elections, including news articles, election returns, certified copies of election results, and recapitulation sheets from probate judges, County Democratic Chairmen, and city clerks. These election records became part of ADC's extensive data files. This persistent data collection practice by local leaders would become an invaluable resource later in the *Dillard* case, when plaintiffs' lawyers didn't have to use valuable time securing election returns for expert witnesses to

---

[18] *Why I Changed My Mind About the Voting Rights Act*, WASH. POST, July 26, 1981, https://www.washingtonpost.com/archive/opinions/1981/07/26/why-i-changed-my-mind-on-the-voting-rights-act/62208ec7-8252-44cd-9006-7010a2070eca/ ("[W]ho can deny the right to vote is superior even to the right of free speech? What good is all the political rhetoric if you can't express your ideas and values at the polls?"). Hyde's conclusion has eerie relevance today, in the wake of *Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010), and *Shelby County v. Holder*, 133 S. Ct. 2612 (2013).

[19] Boyd & Markman, *supra* note 15, at 1366.

[20] 52 U.S.C. § 10301(a) (2012) (emphasis added).

analyze.

PREPARING FOR AND FILING *DILLARD*

After Congress amended Section 2 of the Voting Rights Act in 1982, the lawyers in the *Bolden* case and ADC state leaders began meeting regularly to decide upon a sensible strategy for challenging at-large elections. A consensus was reached not to tackle the issue piecemeal, but to find a way to overturn simultaneously as many discriminatory at-large local election systems as possible. Dismantling at-large elections quickly would allow black representation to increase sooner, and less populated areas would benefit from being a part of a larger legal effort. The basic philosophy of Joe Reed and Jerome Gray, who grew up together in rural Conecuh County, was "to let every flower bloom."

To get ready for the lawsuit, the soon-to-be *Dillard* team hammered out a division of labor. The lawyers, Blacksher, Menefee, and Still, agreed to do the legal research, hire a paralegal, and identify expert witnesses needed to present a strong case at trial. They also sought out the legal and financial assistance of the NAACP Legal Defense Fund, briefing Lani Guinier, who was then heading LDF's voting rights desk, on their litigation strategy. Meanwhile, Jerome Gray and his ADC colleagues set out to target the best counties for the lawyers to sue and to recruit good plaintiffs. ADC also pledged to help finance the lawsuit by asking its county units to contribute a minimum of $500 to sustain the lawsuit. Many local ADC chapters contributed that much and more.

But before challenging the many racially discriminatory at-large election systems for local governing bodies, ADC brought suit under amended Section 2 of the Voting Rights Act seeking a federal court order requiring state and local officials to appoint African Americans as poll officials, positions that historically had been reserved exclusively for whites. They were heartened by Judge Myron Thompson's[21] recognition in *Harris v. Graddick*[22] of the broad scope of Ala-

---

[21] U.W. Clemon of Fairfield, a graduate of Columbia Law School, and Myron H. Thompson of Tuskegee, a Yale Law School graduate, were the first African Americans to be appointed federal judges in Alabama history. They both were nominated by President Jimmy Carter in 1980 and were confirmed with the support of Alabama's two Democratic Senators, Howell Heflin and Donald Stewart. ADC's grassroots political influence played an important role in these judicial appointments.

[22] (*Harris I*), 593 F. Supp. 128 (M.D. Ala. 1984). Blacksher and Menefee were joined as counsel for the Harris plaintiffs by Delores Boyd, Terry Davis, and the Legal Defense Fund's Lani Guinier. Ed Still appeared on behalf of the defendant State Democratic Executive Committee.

bama's official policies which, as Judge Richard Rives wrote, had been "consistently devoted . . . to maintaining white supremacy and a segregated society."[23] Just as encouraging was Judge Thompson's certification of statewide plaintiff and defendant classes, with the Governor and Attorney General responsible for representing the interests of the county appointing boards in the defendant class.[24]

So ADC and its lawyers felt fortunate when the original *Dillard v. Crenshaw County* complaint, filed on November 12, 1985, was assigned to Judge Myron Thompson. Jerome Gray had been surveying local election systems across Alabama for years. Appendix A, *infra*, is a handout he prepared in December 1984, showing the municipalities and county commissions that were already using—or were about to change to—single-member districts. On December 16, 1985, plaintiffs sought leave to amend their complaint to add as defendants the county commissions of Etowah, Lawrence, Coffee, Calhoun, Escambia, Talladega, Lee, and Pickens Counties, which Judge Thompson granted on December 19th. Mr. Gray selected these eight counties in addition to Crenshaw to test the statewide venue question in this voting rights case. He based his selections on the following: 1) the black population percentage in the county; 2) the county's geographical location in the state with respect to Congressional and federal judicial districts; 3) the underrepresentation or absence of black county officials; 4) the number of black candidates who had run for county office and lost; and 5) the strength of the local ADC county units. Crenshaw County actually was an extreme outlier. In 1984, when the *Harris v. Graddick* lawsuit began, Crenshaw County was the only county in the state where no blacks had been appointed as poll officials during the 1982 Primary Election cycle, even though Crenshaw County's population was over twenty percent black.

HOW THE DILLARD PLAINTIFFS WERE CHOSEN

In virtually every instance the ADC state staff gave the ADC county units the responsibility of selecting and recommending named

---

[23] *Id*. at 131 (quoting United States v. Alabama, 252 F. Supp. 95, 101 (M.D. Ala. 1966) (three-judge court)). Judge Thompson would include this same quotation from Judge Rives in his *Dillard v. Crenshaw County* opinion. Dillard v. Crenshaw County, 640 F. Supp. 1347, 1360 (M.D. Ala. 1986).

[24] A preliminary injunction was issued. *See Harris I*, 593 F. Supp. at 136–37. Subsequently, after five days of trial, the parties settled, and the court approved a consent decree ordering the appointment of a proportionate number of black poll officials in each county and requiring detailed reporting before the injunction would be dissolved and the action dismissed on December 31, 1988. *See* Harris v. Graddick, 615 F. Supp. 239 (M.D. Ala. 1985); Harris v. Siegelman, 695 F. Supp. 517, 521 (M.D. Ala. 1988).

plaintiffs to the state office. The ADC staff did lay out some guidelines for plaintiffs to meet. Among them were making sure prospective plaintiffs were: 1) registered voters and residents of the county being sued; 2) persons of good character and integrity in the community; 3) active ADC members or other civic leaders; 4) economically independent; 5) emotionally stable; 6) known team players who respected organizational leadership and protocol; and 7) willing to sign an affidavit consenting to be named plaintiffs in the *Dillard* lawsuit. For the most part, *Dillard* plaintiffs tended to be retired educators, military personnel, business owners, and ministers. John Dillard, the lead plaintiff, was a disabled veteran.[25]

THE PRELIMINARY INJUNCTION

The plaintiffs filed their motion for a preliminary injunction and class certification on February 6, 1986, and by the time of the hearing on March 5th, the Crenshaw and Lee County Commissions had already agreed to settlements, and the Escambia County Commission settled a week later. Judge Thompson rendered his decision with respect to the remaining six county commissions on May 28th.[26] His opinion made findings of fact, based primarily on the testimony of historian Peyton McCrary, that (a) general laws enacted by the Alabama Legislature in the 1950s prohibiting single-shot voting[27] in at-large elections and the 1961 statute requiring all local at-large elections to use numbered places were adopted for the racially discriminatory purpose of assuring that white majorities would control all the seats; and (b) that since Reconstruction Alabama had maintained a pattern or practice of switching between single-member districts and at-large elections to prevent blacks from being elected to local governing bodies.[28] Applying the "results" standard set out in the legisla-

---

[25] The other original plaintiffs were Havard Richburg of Crenshaw County; Nathan Carter, Spencer Thomas, and Wayne Rowe of Etowah County; Hoover White, Moses Jones, Jr., and Arthur Turner of Lawrence County; Damascus Crittenden, Jr., Rubin McKinnon, and William S. Rogers of Coffee County; Earven Ferrell, Ralph Bradford, and Clarence J. Jairrels of Calhoun County; Ullysses McBride, John T. White, Willie McGlasker, William America, and Woodrow McCorvey of Escambia County; Louis Hall, Jr., Ernest Easley, and Byrd Thomas of Talladega County; Maggie Bozeman, Julia Wilder, Bernard Jackson, and Willie Davis of Pickens County.

[26] Dillard v. Crenshaw County, 640 F. Supp. 1347 (M.D. Ala. 1986).

[27] Single-shot voting is the strategy by which an electoral minority would cast one vote for its chosen candidate and abstain from voting for any other candidates in an at-large election for multiple seats, hoping that the majority would split their votes among several candidates and enable the minority's candidate to become one of the plurality winners. *See id.* at 1356 (citations omitted).

[28] *Id*. at 1357 ("In adopting the laws, the state reshaped at-large systems into more se-

tive history of the 1982 Voting Rights Amendments, Judge Thompson also found that the racially "tainted" at-large election schemes adversely affected black voters' rights to an equal opportunity in the defendant counties to participate in the political process and to elect candidates of their choice.[29] He preliminarily enjoined the defendant counties to submit proposed remedial plans, certified plaintiff classes in each county, and set the case for full trial on the merits.[30] Further demonstrating the importance of the 1982 amendment of Section 2 of the Voting Rights Act, the court held that even though res judicata barred the plaintiffs' intentional discrimination claims against Pickens County, because of an adverse ruling in an earlier case under the Fourteenth Amendment, res judicata did not bar the new Section 2 results claim.[31]

Just as important to the plaintiffs was Judge Thompson's ruling that venue over counties located in the Northern and Southern Districts of Alabama was proper in his Middle District court.[32] The key to this holding was his finding of intentional discrimination behind the general laws of Alabama governing all at-large methods of election statewide. There is irony in the fact that the Supreme Court's demand for proof of purposeful discrimination in *City of Mobile v. Bolden* made voting rights litigants begin a careful review of Alabama history. In *Bolden*, *Dillard*, and subsequent cases—even those outside the voting context—Alabama historians would show that the post-Reconstruction constitutions and important statute laws of Alabama were driven by the racially discriminatory agenda of politically powerful white landowners in the Black Belt.[33] Protecting their

---

cure mechanisms for discrimination. And as the evidence makes clear, this reshaping of the systems was completely intentional.").

[29] *Id*. at 1357, 1369. The evidence that no black candidates had ever been elected in the at-large elections used in the defendant counties came from Jerome Gray and his work surveying at-large elections around the state. McCrary et al., *supra* note 3, at 414.

[30] *Dillard I*, 640 F. Supp. at 1373–74.

[31] *Id*. at 1364–68 (citations omitted).

[32] *Id*. at 1369–70.

[33] E.g., in addition to Peyton McCrary, Morgan Kousser, and Jerrell Shofner, historians J. Mills Thornton of the University of Michigan, James D. Anderson of the University of Illinois, William Warren Rogers of Florida State University, Wayne Flynt of Auburn, Robert J. Norrell of the University of Alabama and University of Tennessee, Henry M. McKiven, Jr., of the University of South Alabama, and Jeffrey J. Frederick of the University of North Carolina at Pembroke, would testify about the role of race in Alabama history in Hunter v. Underwood, 471 U.S. 222 (1985) (voting rights); Knight v. Alabama, 787 F. Supp. 1030 (N.D. Ala. 1991), *aff'd in part & rev'd in part*, 14 F.3d 1534 (11th Cir. 1994) (higher education desegregation); Knight v. Alabama, 458 F. Supp. 2d 1273 (N.D. Ala. 2004) (racially discriminatory property tax provisions in state constitution); Lynch v. Alabama, No. 08-S-450 NE, 2011 U.S. Dist. LEXIS 155012 (N.D. Ala. Nov. 7, 2011),

wealth from being taxed to benefit schools and other public services for blacks required vigilant action to suppress the voting strength of their black county majorities,[34] ultimately the disfranchisement of blacks (and many poor whites) in the 1901 Constitution, maintaining Black Belt control of the malapportioned state legislature, racial segregation of schools, and persistent invocation of white supremacy to put down occasional revolts by the white working classes.[35]

But even where, as in *Dillard*, the court found challenged laws to be racially motivated, plaintiffs also had to prove continuing adverse racial effects to obtain relief.[36] That became much easier to do under the amended Section 2 "results" standard when, on June 30, 1986, only a month after Judge Thompson's preliminary injunction decision in *Dillard*, the Supreme Court handed down *Thornburg v. Gingles*.[37] *Gingles* held that, among all the factors listed in the legislative history of the 1982 Voting Rights Amendments, there are three "necessary preconditions" for proving that an at-large election scheme violates the Section 2 "results" standard: (1) a minority population that "is sufficiently large and geographically compact to constitute a majority in a single-member district," (2) political cohesiveness among members of the minority group, and (3) evidence "that the white majority votes sufficiently as a bloc to enable it . . . to defeat the minority's preferred candidate."[38] "Stated succinctly," said the Court, "a bloc voting majority must *usually* be able to defeat candidates supported by a politi-

---

aff'd in part, vacated in part, remanded sub nom. I.L. v. Alabama, 739 F.3d 1273 (11th Cir. 2014), *cert. denied*, 135 S. Ct. 53 (2015) (same).

[34] Writing with remarkable (but long-unpublished) candor in 1957, young Nelle Harper Lee has Atticus Finch explain the Black Belt's problem to his rebellious daughter, Jean Louise (Scout):

> "Think this over: Abbott County, across the river, is in bad trouble. The population is almost three-fourths Negro. The voting population is almost half-and-half now, because of that big Normal School over there. If the scales were tipped over, what would you have? The county won't keep a full board of registrars, because if the Negro vote edged out the white you'd have Negroes in every county office—"
>
> "What makes you so sure?"
>
> "Honey," he said. "Use your head. When they vote, they vote in blocs."

HARPER LEE, GO SET A WATCHMAN 242–43 (2015). In 1988 the City of Monroeville agreed to change from at-large elections to six council members elected from single-member districts. Dillard v. City of Monroeville, No. 2:87-CV-01259 (M.D. Ala., Mar. 1, 1988).

[35] See cases cited in note 33, *supra*.

[36] *E.g.*, Johnson v. DeSoto County Bd. of Comm'rs, 204 F.3d 1335, 1343–46 (11th Cir. 2000).

[37] 478 U.S. 30 (1986).

[38] *Id*. at 49–50 (citations omitted).

cally cohesive, geographically insular minority group."[39] That would not be hard to prove in Alabama, and, combined with the *Dillard* findings of racially motivated general laws and venue over all such claims in the Middle District, *Gingles* was an open invitation for a statewide class action aimed at all local at-large election systems that denied black citizens an equal opportunity to elect their favored candidates.

THE INTERIM CONSENT DECREE

The *Dillard* team decided to seek certification of a defendant class that would include virtually every county commission, school board, and municipality in the state with a black population of 10% or higher, and where blacks were either absent or underrepresented on their respective governing bodies. On March 6, 1987, after being granted leave of court, they filed an amended complaint that sought certification of a defendant class of twenty-seven county school boards and 139 municipalities. The amended complaint added as defendants the Talladega County Board of Education and the City of Childersburg to represent the school board and municipality classes. It also added as defendants the State of Alabama and newly elected Attorney General Don Siegelman in his official capacity, citing the racially motivated general laws of Alabama that tainted all at-large elections and certain statutes that require the Attorney General to examine all state laws to determine their compliance with the Constitution and federal laws.

Before Judge Thompson could rule on the motions to dismiss filed by the new defendants, the parties submitted, and on July 13,

---

[39] *Id*. at 48–49 (quoting, almost verbatim, James U. Blacksher & Larry T. Menefee, *From* Reynolds v. Sims *to* City of Mobile v. Bolden*: Have the White Suburbs Commandeered the Fifteenth Amendment?*, 34 HASTINGS L.J. 1, 51 (1982) ("An at-large election scheme for a state or local multi-representative body is unconstitutional when jurisdiction-wide elections permit a bloc-voting majority, over a substantial period of time, consistently to defeat candidates publicly identified with the interests of and supported by a politically cohesive, geographically insular racial or ethnic minority group.").

> Although employing slightly different terminology, Blacksher and Menefee's test is functionally identical to the one that Justice Brennan—and ultimately the Court—would embrace. It is not clear exactly how Justice Brennan found Blacksher and Menefee's article, as it was not cited in any of the amicus briefs. He may have come to it through the Common Cause brief, which cited scholarship that in turn cited Blacksher and Menefee's article. However Justice Brennan found the article, its articulation of both the theory and doctrine of vote dilution was critical in creating the landmark doctrine we know today.

Daniel P. Tokaji, *Realizing the Right to Vote: The Story of* Thornburgh v. Gingles, *in* ELECTION LAW STORIES 127, 168 (Joshua A. Douglas & Eugene D. Mazo eds., 2016).

1987, the court approved, an interim consent decree that established procedures for defendant class members either to change or to defend their at-large methods of election. The interim consent decree included as defendant class members thirty county school boards, ten county commissions, and 148 municipalities, which, added to the nine defendant county commissions, made a total of 197 local political subdivisions of the state.[40] Eventually, after five local jurisdictions were dropped from the class, the total was 192 defendant class members, of whom 180 ultimately would have their methods of election changed by court orders.[41] A complete list is set out in Appendix B, *infra*.

The defendant class members were given the option of joining one of three subclasses: in subclass A the jurisdiction reserved its right to contest all liability and remedy claims; in subclass B the jurisdiction did not contest plaintiffs' claim that its at-large election system violated Section 2 of the Voting Rights Act and agreed to proceed to a remedy phase; and in subclass C the jurisdiction notified the court that it had already reached agreement with plaintiffs on a remedial election plan. Magistrate Judges John Carroll and Charles Coody were designated to conduct initial proceedings for each subclass. The Attorney General was designated lead counsel and David R. Boyd was appointed to serve as liaison counsel for subclasses B and C. Assistant Attorney General Susan Russ (now Magistrate Judge Susan Russ Walker) was directed to help coordinate communications with the defendant class members.

IMPLEMENTING THE INTERIM CONSENT DECREE

Most of the heavy lifting after entry of the interim consent decree fell to the ADC staff and its membership network. The next big hurdle in the case was deciding on remedies to replace at-large elections in each particular jurisdiction. Jerome Gray coordinated the remedy work and became the primary architect and negotiator for all plaintiffs. He initiated all settlement talks with the defendant class governing bodies. Mr. Gray developed a standard routine for advancing the work. *First*, he traveled to every county and municipality to meet with black leaders and to discuss a preferred remedial election plan. *Second*, Mr. Gray always went armed and loaded with redistricting maps and data sets to provide local leaders with options for considera-

[40] The consent decree also certified John Dillard, Damascus Crittendon, Jr., Earven Ferrell, Clarence J. Jairrels, Ullyses McBride, and Louis Hall, Jr., to represent the statewide plaintiff class.

[41] Dillard v. Chilton County Comm'n, 615 F. Supp. 2d 1292, 1293 (M.D. Ala. 2009).

tion. *Third*, if a consensus was reached on a preferred redistricting plan or remedy, Mr. Gray would make note of it, then get written confirmation from the local plaintiff class members acknowledging their preferred redistricting plan. The *fourth* step involved setting up a meeting with members of the county commission, school board, or municipal government and their attorney, where Mr. Gray presented draft copies and data sets of redistricting plans he had drawn on behalf of the plaintiffs. *Fifth*, whenever Mr. Gray set up meetings with defendants to discuss remedies and settlement, he always invited local black leaders to attend these sessions. *Sixth*, in negotiating with defendant class members Mr. Gray always emphasized that the burden or responsibility for adopting a fair plan rested with them. However, by presenting them a plan plaintiff class members had already approved, he let them know what the plaintiffs reasonably expected in order to settle the lawsuit. *Seventh*, whenever a redistricting plan was agreed to, Mr. Gray promptly notified the plaintiffs' lawyers regarding the acceptable remedy. Shortly thereafter, plaintiffs' lawyers would prepare a draft consent decree to propose to the court. Consistently, the ADC staff sent local leaders copies of all correspondence with defendant class members in the *Dillard* case.

CREATING THE REMEDIAL ELECTION PLANS

As an experienced negotiator already familiar with places where black populations were concentrated in census blocks or enumeration districts, Mr. Gray was able to construct single-member district plans that he was confident would provide black voters a realistic opportunity to elect their candidates of choice. When the *Dillard* case was filed in the mid-1980s, sophisticated computer software programs for redistricting were not readily available. Moreover, the published Census for counties outside large urban areas did not provide data at the level of blocks. The smallest census area in rural areas was a "census tract," which could contain 1,200 to 8,000 people.[42] In some small municipalities it was not uncommon for the ADC state staff to visit a town and recruit local leaders to help perform house counts on certain streets and blocks so that the population could be equalized among districts. Most of the *Dillard* redistricting plans were produced with calculators, census catalog books, large paper census maps, and magic markers. This was very labor intensive, and often required a large space to work in. Even so, Mr. Gray, his assistant Darryl Sinkfield, and the Alabama State University political science

[42] *See Geographic Terms and Concepts—Census Tract*, U.S. CENSUS BUREAU, www.census.gov/geo/reference/gtc/gtc_ct.html (last visited Jan. 20, 2016).

department managed to complete several redistricting plans daily. The ADC staff drew at least 152 plans over a two-year period. Actually, they drew many more, because they typically prepared several plan options for plaintiffs and defendants to review.

One of the most helpful tools Mr. Gray developed and used to craft election plans for negotiations was called a "Population Profile" grid, one of which was developed for each jurisdiction so he could see quickly how many blacks were needed for a majority-black district. Here is a sample:

POPULATION PROFILE OF MODEL COUNTY

Based on the 1980 Census

40,000	Total Population
25,000	Total White Population
62.52%	White Population
17,000	White Voting Age Population
11,000	White Registered Voters
15,000	Total Black Population
37.50%	Black Percentage of Total Population
7,000	Black Voting Age Population
4,500	Black Registered Voters
8,000	Ideal District Size (5 SMDs)
5,600	Black Population of Largest District Size (65% + 5%)
8,400	Largest District Size Acceptable
7,600	Smallest District Size Acceptable
4,800	Black Population of Smallest District Size (65% – 5%)

Mr. Gray also drew and proposed multi-member district plans (such as a two-member district combined with a three-member district) as a means of increasing black representation in small *Dillard* municipalities where it would have been impractical to draw five tiny single-member districts, or where by doing so the electoral strength of scattered black neighborhoods would have been diluted. Consequently, eighteen municipal governments in fifteen different counties adopted a multi-member district plan. They are still in use today.

Mr. Gray takes special pride in his ability to persuade thirty-one local governments in the *Dillard* case to adopt an alternative voting system. Without alternative voting many small municipalities and the Chilton County Commission and School Board would probably have

been unable to elect black officials consistently. Limited voting[43] was adopted by twenty-two small municipalities. The Chilton County Commission and Board of Education and four municipalities agreed to cumulative voting[44] election methods. The Calhoun County Board of Education and the municipalities of Daleville and Wilsonville agreed to plurality at-large elections, eliminating the majority-vote requirement, which allowed the top vote-getters to be elected by plurality voting to five seats in Daleville and seven seats on the Calhoun County School Board and Wilsonville City Council.

Mr. Gray credits Ed Still and Lani Guinier with nudging him to consider using alternative voting as a settlement option for plaintiffs. When he told black voters in Chilton County that it was not possible to draw a majority-black single-member district, ADC Chairman Robert Binion shook his finger and said he "had to have something" for his people. Mr. Gray proposed and explained cumulative voting as an option. It worked. The people of Chilton County understood and accepted it, and they still do today.[45] As a result, black voters

---

[43] Limited voting retains at-large elections but changes the rules governing how votes are cast and counted. Voters are given fewer votes than the number of seats to fill. For example, in most *Dillard* limited voting cases, each voter is allowed to cast only one vote for a city council with five members, and the top five vote-getters are elected, which prevents the majority from dominating all five seats and enables the minority to control the outcome of at least one seat. In a few cases, where the black population is large enough, voters are allowed to cast two votes. *See* Pildes & Donoghue, *supra* note 3, at 253.

[44] Cumulative voting rests on a similar principle but employs a different technique. Voters receive as many votes to cast as there are seats to fill; voters then may distribute these multiple votes among candidates in any way they prefer. Thus, voters may "plump" all their votes on one candidate—the strategy of choice for minority groups with intense preferences for a particular candidate—or give one vote each to several candidates. If five seats on a city council are to be filled, voters would have five votes each to distribute as they saw fit. Again, . . . the same majority cannot dominate the election for all five city-council seats. If the voters in a sufficiently large minority group concentrate all their votes on the same candidate, they can assure that candidate's election regardless of how other voters, including a majority of voters, cast their ballots.

Pildes & Donoghue, *supra* note 3, at 254.

[45] Interview with John Hollis Jackson, Sr., Attorney, Chilton County (October 29, 2015). Mr. Gray believes that the Chilton County cumulative voting system would never have been agreed to by the county commission without the sensible, seasoned presence of Mr. Jackson. In contrast, Mr. Gray believes the lawyer who represented the Covington County Commission was responsible for preventing a settlement. After months and months of no movement in the settlement talks, Mr. Gray was invited to attend a Covington County Commission meeting by the commission chairman and the local ADC chairman, Nelacy Bailey, who said they had struck a deal to adopt a cumulative voting system. But before the chairman could call for a motion, the commission's attorney, who arrived late with media in tow, stood up and spoke forcefully against it. The item on the agenda was tabled and never brought up again.

have succeeded in electing a black commissioner in Chilton County, Bobby Agee, in every election since 1988.[46]

THE POLITICS OF *DILLARD*

An obvious question is why most of the jurisdictions in the *Dillard* defendant class decided to settle rather than fight. From the ADC's perspective there are several reasons. First, many of the small municipalities probably had neither the money nor the desire to fight, and they had few allies urging them to do so. Second, Attorney General Don Siegelman agreed to make his staff available to assist only those local governments in the defendant class willing to enter settlement talks; those jurisdictions wishing to litigate would have to retain their own lawyers. Early on in the process Assistant Attorney General Susan Russ met with Mr. Gray to work out the administrative details of preparing settlement papers. Third, because ADC was an effective political organization that endorsed local candidates, and because Democrats still controlled most county courthouses, white officials were probably reluctant to oppose an issue so important to local ADC leaders. Nor did they want to be on record as defending an at-large election system that a federal judge had found to be racially discriminatory. Through its local leaders and county units, ADC had established strong political relationships with many Democratic officials in local governments. These relationships ran the gamut, from political patronage, especially the appointment of black citizens to serve on various boards, to blacks who had worked in local candidates' campaigns, to activist blacks who regularly attended county commission meetings. But the relationships didn't end there. Many Democratic officials regularly attended local ADC fund-raising dinners and events. Some even attended ADC State Conventions or sponsored ADC members to attend in their stead. Fourth, while most local officials likely had not heard of the Supreme Court's decision in *Thornburg v. Gingles*, the lawyers defending them had to be aware that, if forced to trial, plaintiffs would have little difficulty meeting the *Gingles* standard of unlawful vote dilution.

That certainly was the view of David Boyd, who had the responsibility of coordinating communications between the court and members of defendant subclasses B and C. Given Judge Thompson's rul-

---

[46] An African American also won a seat on the Chilton County School Board in every election until 2014, when the incumbent, Ms. Ann Thomas, barely lost in the general election to a white candidate. Robert Binion ran against her, and his candidacy sufficiently split the black electorate to prevent Ms. Thomas from being among the top seven vote-getters. *Jackson Interview*, *supra* note 45.

ing already against the defendant county commissions and the Supreme Court's recent decision in *Gingles*, he thought a change to single-member districts was nearly inevitable in most jurisdictions sooner or later, and the omnibus judicial resolution provided a relatively inexpensive and orderly way to make that change. Rather than defending an individual Section 2 lawsuit with the outcome virtually pre-determined, the city, county, or school board could take advantage of the assistance of state-paid lawyers and other state-provided resources, and also avoid the cumbersome state-law procedures required to make the change outside a litigation setting. The fact that so many other jurisdictions were in the same boat made it easier for local officials to join the crowd and agree to settle.[47]

The Dillard plaintiffs' lawyers received invaluable assistance from their paralegal, Paola Maranan, and from the NAACP Legal Defense Fund, primarily LDF lawyers Lani Guinier and Pamela Karlan, who are now prominent law professors at Harvard and Stanford, respectively. Blacksher, Menefee, and Still divided the defendant class members among them for purposes of communicating with their lawyers and the court.

THE POLITICAL AND LEGAL BACKLASH

Implementation of the interim consent decree went relatively smoothly for the first few years, but it did not take long for both political and legal backlash to develop. Most *Dillard* jurisdictions settled amicably and quickly. The holdouts were few. Generally, the resistance to settling came from some probate judges not wanting to be removed as chairmen of county commissions. But perhaps the most resistance came from white political leadership in the Black Belt. The most litigated case involved the majority-black City of Greensboro in Hale County, which held out for almost ten years and spent nearly $300,000 of the taxpayers' money in legal fees to avoid relinquishing white-majority control. Led by Mayor John Jay, the white power structure was unyielding in their settlement demands. In effect, they wanted plaintiffs to agree to a five single-member district plan that created three winnable majority-white districts in a town that was 64% black. In their view, an acceptable plan was one that packed blacks into two 70%-plus majority-black districts while creating a third district with a marginal black majority just exceeding 50%. Black voter registration and turnout were still depressed in this old Black Belt town. In the end, Judge Thompson appointed a special

[47] Comments of David Boyd (Nov. 5, 2015) (on file with the authors).

master to draw a fair redistricting plan.[48] Ironically, the special master's plan was almost identical to the plan proposed by the plaintiffs almost ten years earlier in settlement talks. The court's plan was ordered into effect in 1998, and three blacks were elected to the city council in the first election later that year, under the court-ordered plan. Mayor John Jay was defeated by John Owens, a popular black disc jockey recruited to run at the last minute by ADC.

The legal backlash had its source in Supreme Court decisions that began to restrict rather than to expand the scope of the Voting Rights Act. In *Presley v. Etowah County Commission*,[49] the Court held that the unequal duties white commissioners assigned to the black commissioner elected under the *Dillard* decree were not changes affecting voting subject to preclearance under Section 5 of the Voting Rights Act.[50] In *Holder v. Hall*,[51] the Court held that the size of the governing body could not be challenged under Section 2. The Eleventh Circuit extended the holding of *Holder v. Hall* to prohibit federal court remedies for Section 2 violations that altered the forms of government authorized by state law.[52]

The dramatic change in judicial climate, from the warm winds of *Thornburg v. Gingles* to the cold winds of *Holder v. Hall* and *Nipper v. Smith*, did the most damage in coastal Baldwin County. No settlement was reached with the Baldwin County Commission, so Judge Thompson had adjudicated a remedy that increased the number of seats from four elected at-large to seven elected from single-member districts in order to draw one majority-black district.[53] Black voters were able to elect the candidate of their choice, Commissioner Samu-

---

[48] *See* Dillard v. City of Greensboro, 865 F. Supp. 773 (M.D. Ala. 1994), *vacated and remanded*, 74 F.3d 230 (11th Cir. 1996); 946 F. Supp. 946 (M.D. Ala. 1996), 956 F. Supp. 1576 (M.D. Ala. 1997); 34 F. Supp. 2d 1330 (M.D. Ala. 1999) (attorneys' fees), *vacated and remanded*, 213 F.3d 1347 (11th Cir. 2000). The 1996 Eleventh Circuit decision remanded the three majority-black districts originally ordered by Judge Thompson to reassess them in light of *Shaw v. Reno*, 509 U.S. 630 (1993) and *Miller v. Johnson*, 515 U.S. 900 (1995), which required strict scrutiny of redistricting plans that subordinate traditional districting principles to race.

[49] 502 U.S. 491 (1992).

[50] 52 U.S.C. § 10304 (formerly 42 U.S.C. § 1973c). On remand, Judge Thompson nevertheless ruled that the discriminatory assignment of duties violated the provision in the *Dillard v. Etowah County* consent decree that newly elected commissioners be granted "all the rights, privileges, duties and immunities of the other commissioners, who have heretofore been elected at-large." Presley v. Etowah County Comm'n, 869 F. Supp. 1555, 1567 (M.D. Ala. 1994).

[51] 512 U.S. 874 (1994).

[52] Nipper v. Smith, 39 F.3d 1494, 1532 (1994) (en banc).

[53] *See* Dillard v. Baldwin County Comm'n, 701 F. Supp. 808 (M.D. Ala. 1988), *aff'd* 862 F.2d 878 (11th Cir. 1988).

el Jenkins, who quickly gained the respect of his fellow commissioners and the white community. But not everyone was happy, and encouraged by the signals from the Supreme Court and the Eleventh Circuit, four citizens brought a collateral attack on the remedial decree. Judge Thompson dismissed their claim,[54] but the Eleventh Circuit, rejecting plaintiffs' contention that the intervenors were not personally injured by the decree and thus had no Article III standing, ordered the decree vacated "in light of the Supreme Court's decision in *Holder v. Hall*, and this Circuit's holdings in *White v. Alabama*, 74 F.3d 1058 (11th Cir. 1996), and *Nipper v. Smith*."[55] Judge Thompson vacated the 1988 decree and restored the prior system of electing four commissioners at large.[56] No African Americans now serve on the Baldwin County Commission.

"In March 2003, taking their cue from the challenge to the court-ordered relief in the *Baldwin County Comm'n* proceedings,"[57] two citizens of Chilton County launched a collateral attack on the 1988 consent decree increasing the number of seats on the county commission and changing the method of election to cumulative voting. Since there was no general law authorizing county commissions to have seven seats or the use by any political subdivision of alternative election methods like cumulative or limited voting,[58] ADC and the *Dillard* lawyers enlisted the assistance of the Alabama Legislative Black Caucus. After several failed attempts, through negotiations between Rep. John F. Knight, Jr., and Governor Riley's counsel, Ken

---

[54] *See* Dillard v. Baldwin County Comm'n, 53 F. Supp. 2d 1266 (M.D. Ala. 1999), *rev'd sub nom.* Dillard v. Baldwin County Comm'rs, 225 F.3d 1271 (11th Cir. 2000), *abrogated by* Dillard v. Chilton County Comm'n, 495 F.3d 1324 (11th Cir. 2007).

[55] Dillard v. Baldwin County Comm'n, 225 F.3d 1271, 1274 (11th Cir. 2000) (citations omitted).

[56] Dillard v. Baldwin County Comm'n, 222 F. Supp. 2d 1283 (M.D. Ala. 2002). He expressed his regret:

> To be sure, as recounted by the court, Alabama's black citizens have suffered a century and a half of debilitating and humiliating discrimination in voting that has left many of them economically, socially, and politically depressed. However, under federal law, which requires a causal connection between these circumstances and the current election scheme, those in Baldwin County who remain victims today have no unblocked path of voting relief leading into the federal courts.

Id. at 1291.

The Eleventh Circuit rejected a last-ditch appeal by plaintiffs. *See* Dillard v. Baldwin County Comm'rs, 376 F.3d 1260 (11th Cir. 2004).

[57] Dillard v. Chilton County Comm'n., 447 F. Supp. 2d 1273, 1275 (M.D. Ala. 2006).

[58] One municipality, the City of Centre in Cherokee County, had the cumulative voting system it agreed to by consent decree in 1988 adopted the next year as state law by a local act, No. 89-509, sponsored by Rep. Richard Lindsey.

Wallis, in 2006 the legislature passed the "Dillard Act," Act No. 2006-252. Now codified at Section 11-80-12 of the Alabama Code, it provides:

> Notwithstanding any other provision of law to the contrary, any board of education, county commission, or municipal governing body whose currently serving members have been elected by a method of election and a specific number of seats prescribed by a federal court shall retain that manner of election and composition until such time as the method of election or number of seats is changed in accordance with general or local law. This section shall not apply in any county where a federal court has overturned the previous order concerning the manner of election and the number of members of a county commission and shall not apply in any county where there is currently pending litigation, or appeals relating thereto, challenging previous court orders or consent orders concerning the manner of elections or the number of members or districts of a county commission.

Thus was established a state law basis for the scores of consent decrees entered in the *Dillard* case that had changed the governing body's method of election and/or number of seats.[59]

But because of its pending litigation exception (and not by accident), the Dillard Act did not resolve the collateral attack on the seven-member Chilton County Commission elected by cumulative voting. Even though, unlike the adjudicated decree against the Baldwin County Commission, the Chilton County remedy was entered as a consent decree, Judge Thompson felt bound by Eleventh Circuit precedent once again to reject plaintiffs' argument that the challengers lacked standing.[60] He vacated the consent decree and ordered a return to at-large elections for numbered posts with the probate judge as ex-officio chair.[61] But on this appeal, fortune favored the plaintiffs. On

---

[59] The Dillard Act was given even broader scope for county commissions by Act No. 2007-488, codified at ALA. CODE § 11-3-1(c) (2008):

> Unless otherwise provided by local law, by court order, or governed by Section 11-80-12, and as otherwise provided in subsection (d), there shall be in every county a county commission, composed of the judge of probate, who shall serve as chairman, and four commissioners, who shall be elected at the time prescribed by law and shall hold office for four years until their successors are elected and qualified.

[60] Until Eleventh Circuit law is changed by the appellate court en banc or by the Supreme Court, to assert a collateral § 2 challenge and put to the test a § 2 remedy based on intentional discrimination, it is sufficient for challengers to allege that "they are being subjected to, and their voting power is being affected by, an illegal election scheme that was plainly created because of or on account of race."

Dillard v. Chilton County Comm'n., 447 F. Supp. 2d 1273, 1278 (M.D. Ala. 2006) (quoting Dillard v. Baldwin County Comm'n, 225 F.3d at 1281).

[61] *Id.* at 1274, 1280–81.

March 5, 2007, less than two months before the April 25 oral argument in the Court of Appeals, the Supreme Court handed down *Lance v. Coffman*,[62] unanimously holding that a citizen claiming that court-ordered Congressional districts violated the Elections Clause[63] lacked Article III standing. The Court applied the same reasoning relied on by the *Dillard* plaintiffs, namely, that the plaintiff was asserting only an "undifferentiated, generalized grievance about the conduct of government" and suffered no particularized harm to himself personally.[64] Not only was the timing of *Lance v. Coffman* fortuitous, but so too was what the parties learned a week before oral argument—that Senior Tenth Circuit Judge David Ebel, who had presided over the three-judge district court the Supreme Court had just reversed in *Lance v. Coffman*, would sit as a visiting judge in the *Dillard* appeal. After oral argument the *Dillard* panel ordered the parties to brief the standing issue in light of *Lance v. Coffman*, and after the briefs were filed they rendered a decision vacating the district court order terminating the consent decree and remanding "with instructions to DISMISS the Intervenors' claims, without prejudice, for lack of standing."[65] The Eleventh Circuit acknowledged that its *Baldwin County* decision had been wrongly decided when it rejected the *Dillard* plaintiffs' contention that the challengers there lacked standing as well.[66] So the seven-member, cumulative voting system for electing the Chilton County Commission was saved by the bell [sic: Ebel], but it was too late to restore the seven-member, single-member district scheme in the closed Baldwin County case.

THE CONCLUSION OF *DILLARD* AND THE IMPACT OF *SHELBY COUNTY V. HOLDER*

When Judge Thompson finally dismissed the Chilton County Commission action in its entirety, he noted that "this action is the last of the 180 court-ordered election plans still active in the longstanding set of *Dillard* cases."[67] That is because from 2006–2007, with the co-

---

[62] 549 U.S. 437 (2007).

[63] The Elections Clause provides that the "Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." U.S. CONST. art. I, § 4, cl. 1.

[64] 549 U.S. at 442.

[65] Dillard v. Chilton County Comm'n, 495 F.3d 1324, 1340 (11th Cir. 2007).

[66] *Id.* at 1332–33 ("We . . . upheld . . . *Baldwin III*, 225 F.3d at 1278–80. . . . But it is clear that we can no longer do so in light of the Supreme Court's most recent pronouncement on voter standing in *Lance v. Coffman* . . . .").

[67] Dillard v. Chilton County Comm'n, 615 F. Supp. 2d 1292, 1293 (M.D. Ala. 2009).

operation of Assistant Attorney General John J. (Jack) Park, the *Dillard* plaintiffs' lawyers were able to obtain final judgments relinquishing federal court jurisdiction over all the remaining political subdivisions in the defendant class. Because of the state law protection afforded by the Dillard Act, all the court-ordered changes were safe from collateral attacks based on *Holder v. Hall* and its Eleventh Circuit progeny. The protection of retained federal court jurisdiction was replaced by the safeguard of Section 5 of the Voting Rights Act, which barred future changes in all these local election methods that would have the purpose or effect of producing retrogression in the ability of their black minorities to elect candidates of their choice.

That Section 5 protection disappeared less than three years later, when on June 25, 2013, the Supreme Court handed down *Shelby County v. Holder*.[68] Chief Justice John Roberts's majority opinion held that the coverage formula in Section 4(b) of the Voting Rights Act[69] was unconstitutional, not because it violated some provision written in the Constitution, but because it violated "our historic tradition that all the States enjoy equal sovereignty."[70] Ironically, Shelby County had agreed to a consent decree in 1990 that made it the largest single-member district system in the state, with nine commissioners. It retains that system today, even though tremendous growth in white suburban migration has made it difficult to draw a majority-black district in Shelby County, and all nine commissioners are now white.[71]

Section 2 of the Voting Rights Act still affords black minorities some protection, and the *Dillard* settlements are holding on remarkably well after thirty years. Although Alabama has become an overwhelmingly Republican state since the 1980s,[72] there have been few

---

By order entered December 16, 2010, No. 2:85-cv-01332, Judge Thompson dismissed without prejudice the claims that had lain dormant for decades against the remaining defendant subclass A members: Jefferson County Board of Education, Morgan County Commission, Covington County Commission, Covington County Board of Education, Geneva County Board of Education, Geneva County Commission, City of Helena, City of Muscle Shoals, City of Pine Hill, Shelby County Board of Education, St. Clair County Board of Education, and St. Clair County Commission. The order concluded: "It is further ORDERED that this action is dismissed in its entirety."

[68] 133 S. Ct. 2612 (2013).

[69] 52 U.S.C. § 10303(b) (formerly 42 U.S.C. § 1973(b)).

[70] Shelby County v. Holder, 133 S. Ct. 2612, 2621 (2013) (citation omitted). For criticism of this "equal sovereignty" rationale, see James U. Blacksher & Lani Guinier, *Free at Last: Rejecting Equal Sovereignty and Restoring the Constitutional Right To Vote*: Shelby County v. Holder, HARV. L. & POL. REV. 39 (2014).

[71] However, the President of the Shelby County School Board, which was dismissed as a *Dillard* subclass A member and still elects its five members at large, is Aubrey Miller, an African American.

[72] Republicans now control large majorities in both houses of the Alabama Legislature

attempts to undo the *Dillard* plans of local governing bodies. Fortunately, the *Dillard* losses have been limited primarily to fast-growing suburban counties, like Shelby, Baldwin, and Elmore, and to very small municipalities where black candidates often don't run for office.

Occasionally objections have come from newly elected white commissioners who want to make headlines, claiming that reducing the number of districts would streamline government. The rumbling has been loudest in Fayette County and Lawrence County. In Clarke County, the Republican Commissioners have employed a different tactic. Instead of seeking to undo the court decrees, black commissioners say the new approach is to diminish their influence by denying them patronage. Reports have begun to come in from ADC leaders about old polling places being moved, boards of registrars assigning black voters to the wrong districts, fewer blacks being appointed as poll officials, and more white poll officials being appointed in majority-black precincts. And, of course, the loss of Section 5 protection has enabled the Republican-controlled legislature to enact photo identification, proof of citizenship, and other new restrictions on registration and voting that ADC believes is an organized regime of vote suppression facilitated by loss of Section 5 protection. But that rapidly evolving issue is beyond the scope of this article.

In retrospect, the *Dillard* cases were the beneficiaries of the Warren-era Supreme Court rulings, arguably the only time in American history that the Court took the lead in a movement toward equal rights for African Americans.[73] In most other eras, the Court has been a conservative and sometimes reactionary opponent of Congressional efforts to restrict slavery[74] and provide freedmen (and women) all the privileges of national citizenship,[75] and has upheld state laws disfran-

---

and every state office elected statewide. All the black members of the House and Senate are still Democrats, and, because there are few white Democratic legislators left, they have complained in federal court that they are being segregated politically in the legislature, just as black Republicans were isolated by Conservative Democrats after Reconstruction. See the majority and dissenting opinions in *Alabama Legislative Black Caucus v. Alabama*, 989 F. Supp. 2d 1227 (M.D. Ala. 2013) (three-judge court), *vacated & remanded*, 134 S. Ct. 2695 (2014).

[73] *See generally*, DERRICK BELL, RACE, RACISM AND AMERICAN LAW (4th ed. 2000).

[74] *E.g.*, Fletcher v. Peck, 10 U.S. 87, 142 (1810) (*sub silentio* affirming Congress' refusal to extend the anti-slavery provision of the Northwest Ordinance of 1787 to the Western Territories of Georgia (Alabama and Mississippi)); Dred Scott v. Sandford, 60 U.S. 393 (1857) (declaring unconstitutional the Missouri Compromise prohibition of slavery in territories within the Louisiana Purchase north of 36°30' latitude).

[75] *See* Slaughter-House Cases, 83 U.S. 36 (1873); Minor v. Happersett, 88 U.S. 162 (1874).

chising black citizens[76] and segregating them in all aspects of life.[77] *Thornburg v. Gingles* may have been the last great equal rights decision from what remained of the Warren Court. The return to constitutional policies that favor states' rights over racial equality began ten years before *Gingles* with *Washington v. Davis*,[78] which demanded proof of intentional discrimination to prove an Equal Protection violation, continued to *Presley v. Etowah County*, the first case to construe the Voting Rights Act narrowly, and has reached what may not yet be its culmination in *Shelby County v. Holder*.

The *Dillard* cases owe their successful outcomes to their favorable timing in the wake of pro-voting rights initiatives by Congress and the Supreme Court, to Judge Thompson and Magistrate Judges Carroll and Coody, who believed that the Voting Rights Act should be fully enforced, and to Don Siegelman, Susan Russ Walker, David Boyd, and many other lawyers for defendant jurisdictions who believed that providing equal opportunity for black voters was the right thing to do. But, most of all, *Dillard* is a monument to the power of grassroots action by black Alabamians themselves and to the hard work of the Alabama Democratic Conference, its Chairman, Dr. Joe L. Reed, and, in particular, its former State Field Director, Jerome Gray, who skillfully mobilized those grassroots leaders throughout Alabama.

---

[76] Giles v. Harris, 189 U.S. 475 (1903) (refusing to strike down the disfranchisement provisions of the 1901 Constitution of Alabama).

[77] *See, e.g.,* Plessy v. Ferguson, 163 U.S. 537 (1896).

[78] 426 U.S. 229 (1976).

Appendix A

ADC HANDOUT

December, 1984

SOME FACTS REGARDING DISTRICT ELECTIONS IN ALABAMA

A. Presently, eleven (11) municipalities elect their councilmembers from single-member districts.

Cities	Total No. Of Dists.	Maj. Blk. Districts	Black Pop.	Blacks Elected
Adamsville	5	1	27.8	1
Alabaster	5	1	23.8	1
Anniston	4	2	40.8	2
Attalla	3	1	17.8	1
Eutaw	5	2	53.1	2
Evergreen	5	2	40.3	2
Greenville	5	2	39.1	2
Montevallo	5	1	19.4	1
Montgomery	9	4	39.1	4
Phenix City	3	1	35.7	1
Selma	5	2	52.6	2

B. Listed below are municipalities that have either passed ordinances or given a verbal commitment to local leaders that they plan to redistrict by 1988; or where lawsuits are pending. In most, negotiated settlements are being reached.

Andalusia	Georgiana	++Mobile	+Gadsden
Clanton	York	+Marion	+Jackson
Elba	+Bessemer	+Lafayette	++Troy
Eufaula	+Opelika	+Lanett	+Tuscaloosa

\+ Lawsuit Filed
++ Mobile & Troy will hold district elections in 1985.

C. Presently, twenty-two (22) counties elect commissioners from single-member voting districts.

Counties	Total No. Of Dists.	Maj. Blk. Districts	Black Pop.	Blacks Elected
Autauga	4	0	22.4	0
Barbour	7	2	44.5	2
Butler	4	1	38.7	1
Chambers	5	1	35.4	0
Choctaw	4	2	43.4	2
Clarke	4	1	42.7	1
Colbert	4	0	16.8	0
Conecuh	4	1	41.1	1
Cullman	2 (?)	0	0.9	0
Dale	4	0	16.4	0
Hale	4	2	62.7	1
Lamar	4	0	12.7	0
Lauderdale	4	0	9.7	0
Limestone	4	0	14.2	0
Marion	5	0	2.3	0
Mobile	3	1	31.5	1
Monroe	4	2	43.0	0
Montgomery	5	2	39.4	2
Pike	6	2	35.0	2
Randolph	4	0	34.2	0
Tallapoosa	5	1	27.0	0
Washington	4	1	28.1	0

Redistricting
Page 2
December, 1984

D. Presently, lawsuits are pending to redistrict the county commission in at least seven (7) different counties.

1. Chambers
2. Dallas
3. Greene
4. Jefferson
5. Marengo
6. Russell
7. Tuscaloosa

E. Other Comments

By 1988, a number of cities and counties not included in this list are expected to go to districts.

1. Legislation is already being drafted to make it easier for all cities and counties to be redistricted simply by passing an ordinance and submitting a redistricting plan to the Justice Department for preclearance without having to go through the Legislature.
2. A bill is being prepared to be introduced in the Alabama Legislature in 1985 to redistrict the City of Birmingham.
3. Several counties are working on bills to be introduced during the 1985 legislative session to change their at-large system to district voting.
4. More and more jurisdictions are voluntarily going to districts because they are finding that it is extremely difficult to win challenges by plaintiffs to at-large systems, especially if these cases are tried properly and thoroughly and where plaintiffs' attorneys can show clearly that racially polarized bloc voting is prevalent whenever black candidates have run for office. This is one of the most important things that plaintiffs' attorneys much show under Section 2 of the Voting Rights Act as amended, in making a case that the at-large system is discriminatory.
5. The legal fees and cost to taxpayers are enormous when a city or county loses a voting rights case. In the Mobile v. Bolden case, the plaintiffs' attorneys were awarded legal fees in excess of one million dollars. The defendants lawyers must be paid also out of the city's or county's treasury.
6. Even where plaintiffs' attorneys have lost a voting rights case at the district court level, the record of reversals has been very high whenever plaintiffs' attorneys have appealed good cases to the 11th Circuit Court of Appeals in Atlanta, Georgia.

Appendix B
Dillard Defendant Subclass Members

MMD = multi-member districts
SMD = single-member districts

A = subclass A
PAL = plurality at-large election

LV = limited voting, each voter has 1 vote
LV2 = limited voting, each voter has 2 votes
CV = cumulative voting

COUNTY COMMISSIONS

County Comm'n	CA Number	Election Method	Seats	Decree date	Final judgment date	Citations
Baldwin	87-T-1159-N	SMD	7	6/6/88	9/3/02	701 F. Supp. 808 (1988), *aff'd*, 862 F.2d 878 (11th Cir. 1988); 53 F. Supp. 2d 1266 (1999), *rev'd*, 225 F.3d 1271 (11th Cir. 2000); 222 F. Supp. 2d 1283 (2002); 282 F. Supp. 2d 1302 (2003), *aff'd*, 376 F.3d 1260 (11th Cir. 2004)
Bibb	87-T-1162-N	SMD	5	6/10/88	8/23/07	2007 WL 4289808
Calhoun	85-T-1332-N	SMD	5	4/25/88	7/31/06	649 F. Supp. 289 (1986), *remanded*, 831 F.2d 246 (11th Cir. 1987); 679 F. Supp. 1546 (1988)
Chilton	87-T-1179-N	CV	7	6/23/88	3/23/09	447 F. Supp. 2d 1273 (2006); 452 F. Supp. 2d 1193 (2006) *vacated & remanded*, 495 F.3d 1324 (11th Cir. 2007); 525 F. Supp. 2d 1315 (mem) (2007); 2008 WL 912753; 615 F. Supp. 2d 1292 (2009)

County Comm'n	CA Number	Election Method	Seats	Decree date	Final judgment date	Citations
Coffee	85-T-1332-N	SMD	7	7/30/92	8/15/07	2007 WL 2412259
Colbert	87-T-1186-N	SMD	6	5/11/88	12/9/05	494 F. Supp. 2d 1297 (2007)
Covington	85-T-1332-N	A	5			
Crenshaw	85-T-1332-N	SMD	5	6/18/86	8/7/07	640 F. Supp. 1347 (1986); 2007 WL 2412277
Escambia	85-T-1332-N	SMD	5	5/5/86	8/8/07	2007 WL 2300866
Etowah	85-T-1332-N	SMD	6	11/12/86	7/6/07	2007 WL 2381300
Fayette	87-T-1208-N	SMD	6	1/22/91	8/15/07	2007 WL 2381324
Geneva	85-T-1332-N	A	5			
Lawrence	85-T-1332-N	SMD	5	12/19/86	10/3/06	649 F. Supp. 289 (1986); 2006 WL 3923887
Lee	85-T-1332-N	SMD	5	6/16/86	8/7/07	2007 WL 2412267
Morgan	85-T-1332-N	A	5			
Pickens	85-T-1332-N	SMD	5	10/21/86	8/9/07	649 F. Supp. 289 (1986); 2007 WL 2412266
Shelby	85-T-1332-N	SMD	9	5/25/90	10/1/07	748 F. Supp. 819 (1990); 2007 WL 4289862
St. Clair	85-T-1332-N	A	5			
Talladega	85-T-1332-N	SMD	5	12/11/86	7/5/07	2007 WL 2381313

COUNTY SCHOOL BOARDS

Cty. Bd. of Education	CA Number	Election Method	Seats	Decree date	Final judgment date	Citations
Baldwin	87-T-1158-N	SMD	7	10/21/88	4/22/92	686 F. Supp. 1459 (1988)
Bibb	87-T-1161-N	SMD	5	06/10/88	5/2/07	2007 WL 1608161
Calhoun	87-T-1168-N	PAL	7	08/01/89	5/2/07	2007 WL 1607842
Chilton	87-T-1178-N	CV	7	06/23/88	10/31/06	699 F. Supp. 870 (1988); 2006 WL 3240661
Coffee	87-T-1183-N	SMD	7	10/31/88	5/8/07	2007 WL 1607832
Colbert	87-T-1185-N	SMD	6	01/20/93	5/9/07	2007 WL 1607655
Covington	87-T-1192-N	A	5			
Crenshaw	87-T-1193-N	SMD	5	09/18/92	5/8/07	2007 WL 1608591
Elmore	87-T-1202-N	SMD	7	05/19/92	1/27/93	
Escambia	87-T-1203-N	SMD	7	12/18/87	11/8/05	
Fayette	87-T-1207-N	SMD	6	01/03/90	5/8/07	2007 WL 1608293
Geneva	85-T-1332-N	A	5			
Hale	87-T-1227-N	SMD	5	11/02/88	9/22/95	
Houston	87-T-1234-N	SMD	7	07/05/88	5/8/07	2007 WL 1608934
Jefferson	85-T-1332-N	A	5			
Lamar	87-T-1239-N	SMD	7	no prior order	9/28/04	
Lee	87-T-1240-N	SMD	7	12/18/87	8/16/07	2007 WL 2381382
Limestone	85-T-1332-N	SMD	7	07/18/89	8/15/07	2007 WL 2412263

Cty. Bd. of Education	CA Number	Election Method	Seats	Decree date	Final judgment date	Citations
Montgomery	85-T-1332-N	SMD	6	05/12/88	5/27/92	
Pickens	87-T-1274-N	SMD	5	05/29/88	5/2/07	2007 WL 1607834
Pike	87-T-1277-N	SMD	6	05/20/92	2/1/05	
Randolph	87-T-1283-N	SMD	7	05/04/88	5/9/07	2007 WL 1607653
Shelby	85-T-1332-N	A	5			
St. Clair	85-T-1332-N	A	7			
Talladega	87-T-1295-N	SMD	5	09/25/89	5/2/07	2007 WL 1607720
Tallapoosa	87-T-1296-N	SMD	5	05/17/88	4/3/07	
Tuscaloosa	87-T-1303-N	SMD	7	04/29/88	5/2/07	2007 WL 1608882
Washington	87-T-1309-N	SMD	5	06/06/88	5/2/07	2007 WL 1608502

MUNICIPALITIES

Municipality	County	CA Number	Election method	Seats	Decree date	Final judgment date	Citations
Abbeville	Henry	87-T-1150-N	SMD	5	8/24/92	2/14/03	
Alex City	Tallapoosa	87-T-1151-N	SMD	6	4/28/89	3/14/05	
Aliceville	Pickens	87-T-1152-N	SMD	5	9/17/92	5/15/02	
Ariton	Dale	87-T-1153-N	LV	5	5/17/88	8/30/06	2006 WL 2827111
Ashland	Clay	87-T-1154-N	SMD	5	5/11/88	7/13/04	
Athens	Limestone	87-T-1155-N	SMD	5	33770	2/14/03	
Atmore	Escambia	87-T-1156-N	SMD	5	11/13/87	5/20/02	
Autaugaville	Autauga	87-T-1157-N	MMD	5	1/15/88	4/20/07	2007 WL 1548937
Bay Minette	Baldwin	87-T-1160-N	SMD	5	5/24/88	2/14/03	
Boligee	Greene	87-T-1163-N	MMD	5	5/17/88	4/20/07	2007 WL 1548933
Brantley	Crenshaw	87-T-1164-N	MMD	5	4/13/88	4/18/07	2007 WL 1547518
Brent	Brent	87-T-1165-N	SMD	5	4/25/88	3/4/05	
Brewton	Escambia	87-T-1166-N	SMD	5	11/13/87	5/20/02	
Calera	Shelby	87-T-1167-N	SMD	5	1/3/90	5/9/07	2007 WL 1607656
Camden	Wilcox	87-T-1169-N	SMD	5	1/17/90	3/19/03	
Carbon Hill	Walker	87-T-1170-N	LV	7	9/17/92	3/19/04	
Carrollton	Pickens	87-T-1171-N	SMD	5	7/23/92	3/19/03	
Castleberry	Conecuh	87-T-1172-N	MMD	5	6/27/88	5/15/07	2007 WL 1630956
Cedar Bluff	Cherokee	87-T-1173-N	SMD	5	8/22/92	3/19/03	

Centre	Cherokee	87-T-1174-N	CV	7	5/13/88	3/19/03	
Centreville	Bibb	87-T-1175-N	SMD	5	9/15/88	9/15/05	
Cherokee	Colbert	87-T-1176-N	SMD	5	8/11/88	8/23/05	
Childersburg	Talladega	87-T-1177-N	SMD	5	1/3/90	6/14/04	
Citronelle	Mobile	87-T-1180-N	SMD	5	12/21/89	11/3/92	
Clayton	Barbour	87-T-1181-N	SMD	5	3/23/88	11/25/92	
Clio	Barbour	87-T-1182-N	SMD	5	6/17/88	6/28/05	
Coffeeville	Clarke	87-T-1184-N	MMD	5	8/1/88	4/10/07	2007 WL 1548923
Collinsville	Dekalb	87-T-1187-N	SMD	5	8/11/88	1/20/06	
Columbia	Houston	87-T-1188-N	SMD	5	5/11/88	6/21/07	2007 WL 2381374
Columbiana	Shelby	87-T-1189-N	SMD	5	5/9/88	7/13/04	
Cottonwood	Houston	87-T-1190-N	SMD	5	6/9/88	6/21/07	2007 WL 2381380
Courtland	Lawrence	87-T-1191-N	SMD	5	4/1/88	6/1/04	
Cuba	Sumter	87-T-1194-N	LV	5	7/18/88	4/9/07	708 F. Supp. 1244 (1988); 2007 WL 1394506
Dadeville	Tallapoosa	87-T-1195-N	SMD	5	7/20/92	5/31/07	2007 WL 1630679
Daleville	Dale	85-T-1332-N	PAL	5	2/21/89	7/5/07	2007 WL 2412296
Daviston	Tallapoosa	87-T-1196-N	SMD	5	6/15/88	5/18/05	
Decatur	Morgan	87-T-1197-N	SMD	5	11/13/87	6/1/04	
Detroit	Lamar	87-T-1198-N	SMD	5	3/22/88	10/14/04	
Dora	Walker	87-T-1199-N	LV	7	5/31/88	5/15/07	2007 WL 1630731
Dozier	Crenshaw	87-T-1200-N	MMD	6	6/14/88	4/18/07	2007 WL 1548939

Elba	Coffee	87-T-1201-N	SMD	5	4/1/88	1/6/04	863 F. Supp. 1550 (1993) (attorney fees)
Eufaula	Barbour	87-T-1204-N	SMD	5	4/4/88	4/9/03	
Faunsdale	Marengo	87-T-1205-N	LV2	5	1/3/90	4/9/07	2007 WL 1394504
Fayette	Fayette	87-T-1206-N	SMD	5	3/22/88	3/30/04	
Five Points	Chambers	87-T-1209-N	MMD	5	1/15/88	4/18/07	2007 WL 1548935
Flomaton	Escambia	87-T-1210-N	SMD	5	11/13/87	5/20/02	
Florala	Covington	87-T-1211-N	SMD	5	3/7/89	6/1/04	
Florence	Lauderdale	87-T-1212-N	SMD	6	6/7/88	5/20/04	
Foley	Baldwin	87-T-1213-N	SMD	5	5/16/89	3/6/98	926 F. Supp. 1053 (1995); 166 F.R.D. 503 (1996); 995 F. Supp. 1358 (1998) (attorney fees)
Fort Deposit	Lowndes	87-T-1214-N	SMD	5	4/29/88	7/19/04	
Frisco City	Monroe	87-T-1215-N	SMD	5	7/28/92	7/29/04	
Fulton	Clarke	87-T-1216-N	LV2	5	4/18/90	4/9/07	2007 WL 1394500
Geneva	Geneva	87-T-1217-N	SMD	7	1/3/90	9/12/05	
Georgiana	Butler	87-T-1218-N	SMD	5	6/7/88	7/16/04	
Glenwood	Crenshaw	87-T-1219-N	MMD	5	4/13/88	4/18/07	2007 WL 1548931
Gordo	Pickens	87-T-1220-N	SMD	5	5/31/88	3/1/04	
Goshen	Pike	87-T-1221-N	LV	5	5/6/88	4/9/07	2007 WL 1394491
Graysville	Jefferson	87-T-1222-N	SMD	5	4/1/88	5/14/03	

Greensboro	Hale	87-T-1223-N	SMD	5		6/1/04	865 F. Supp. 773 (1994); 946 F. Supp. 946 (1996); 956 F. Supp. 1576 (1997); 34 F. Supp. 2d 1330 (1999); 213 F.3d 1347 (11th Cir. 2000) (attorney fees)
Grove Hill	Clarke	87-T-1224-N	SMD	5	12/22/87	5/14/03	
Guin	Marion	87-T-1225-N	CV	7	6/17/88	8/31/06	2006 WL 2849780
Guntersville	Marshall	87-T-1226-N	SMD	7	6/10/88	7/20/04	
Harpersville	Shelby	87-T-1228-N	MMD	5	6/17/88	5/18/07	2007 WL 1630759
Hartford	Geneva	87-T-1229-N	SMD	5	4/27/89	9/12/05	
Hayneville	Lowndes	87-T-1230-N	MMD	5	9/29/88	4/20/07	2007 WL 1548929
Headland	Henry	87-T-1231-N	SMD	5	6/17/88	5/13/03	
Heath	Covington	87-T-1232-N	CV	5	11/2/89	8/15/07	2007 WL 2381377
Heflin	Cleburne	87-T-1233-N	SMD	5	1/21/88	9/7/04	
Helena	Shelby	85-T-1332-N	A	5			
Hueytown	Jefferson	87-T-1235-N	SMD	5	5/31/88	5/13/03	
Irondale	Jefferson	87-T-1236-N	SMD	7	6/7/88	5/19/03	
Jemison	Chilton	87-T-1237-N	SMD	5	12/18/87	8/19/04	
Kinsey	Houston	87-T-1238-N	LV	7	5/19/89	8/25/06	2006 WL 2882429
Leeds	Jefferson	87-T-1241-N	SMD	5	6/9/88	7/16/04	
Lincoln	Talladega	87-T-1242-N	SMD	5	8/9/88	5/19/03	
Linden	Marengo	87-T-1243-N	SMD	5	7/21/88	4/2/04	

Lineville	Clay	87-T-1244-N	SMD	5	1/8/88	7/20/04	
Lipscomb	Jefferson	87-T-1245-N	SMD	5	4/29/88	9/9/05	
Livingston	Sumter	87-T-1247-N	SMD	5	7/27/88	7/15/04	
Loachapoaka	Lee	87-T-1248-N	LV	5	2/2/88	4/10/07	2007 WL 1547656
Louisville	Barbour	87-T-1249-N	SMD	5	2/7/90	7/26/04	730 F. Supp. 1546 (1990)
Lowndesboro	Lowndes	87-T-1250-N	LV2	5	6/17/88	5/18/07	2007 WL 1630883
Luverne	Crenshaw	87-T-1251-N	SMD	5	4/29/88	5/22/03	
Madison	Madison	85-T-1332-N	SMD	7	4/28/89	4/17/92	
Madrid	Houston	87-T-1253-N	LV	5	4/29/88	4/9/07	2007 WL 1394483
Maplesville	Chilton	87-T-1254-N	SMD	5	6/7/88	1/24/05	
Margaret	St. Clair	87-T-1255-N	MMD	5	6/7/88	5/15/07	2007 WL 1631304
McKenzie	Butler	87-T-1252-N	SMD	5	5/17/88	5/15/07	2007 WL 1630880
Midland City	Dale	87-T-1256-N	SMD	5	6/7/88	6/2/03	
Millport	Lamar	87-T-1257-N	SMD	5	6/20/88	3/12/93	
Millry	Washington	87-T-1258-N	MMD	5		4/18/07	2007 WL 1548928
Monroeville	Monroe	87-T-1259-N	SMD	6	4/1/88	8/26/04	
Moulton	Lawrence	87-T-1260-N	SMD	5	4/1/88	7/20/04	
Moundville	Hale	87-T-1261-N	SMD	5	6/17/88	6/1/04	
Mount Vernon	Mobile	87-T-1262-N	SMD	5	5/25/88	9/23/04	
Muscle Shoals	Colbert	85-T-1332-N	A	5			
Myrtlewood	Marengo	87-T-1263-N	CV	5	5/5/89	4/6/07	2007 WL 1346614
New Brockton	Coffee	87-T-1264-N	SMD	5	4/29/88	6/2/03	

Newton	Dale	87-T-1265-N	SMD	5	9/26/88	7/6/06	
Newville	Henry	87-T-1266-N		5	6/28/88	6/11/03	
North Johns	Jefferson	87-T-1267-N	SMD	5		9/26/05	717 F. Supp. 1471 (1989)
Notasulga	Macon	87-T-1268-N	SMD	5	4/13/88	1/12/04	
Opp	Covington	87-T-1269-N	SMD	5	1/27/92	7/1/04	
Orrville	Dallas	87-T-1270	LV	5	5/2/89	10/20/06	2006 WL 3391515
Parrish	Walker	87-T-1271-N	SMD	5	3/22/88	8/12/04	
Pell City	St. Clair	87-T-1272-N	SMD	5	4/25/88	7/20/04	
Pennington	Choctaw	87-T-1273-N	LV	5	8/26/88	10/18/06	2006 WL 3909517
Pickensville	Pickens	87-T-1275-N	LV	5	7/7/88	8/31/06	2006 WL 2882388
Piedmont	Calhoun	87-T-1276-N	SMD	7	2/22/88	5/25/04	
Pinckard	Dale	87-T-1278	SMD	5	5/4/89	7/8/04	
Pine Apple	Wilcox	87-T-1279-N	LV	5	1/8/88	10/3/06	2006 WL 2847245
Pine Hill	Wilcox	85-T-1332-N	A	5			
Prattville	Autauga	87-T-1280-N	SMD	7	8/28/92	7/20/04	
Providence	Marengo	87-T-1281-N	LV	5	6/17/88	10/17/07	2007 WL 4289695
Ragland	St. Clair	87-T-1282-N	SMD	5	7/18/88	7/16/04	
Reform	Pickens	87-T-1284-N	SMD	5	6/14/88	12/17/03	
River Falls	Covington	87-T-1285-N	MMD	5	6/23/88	4/5/07	2007 WL 1394477
Riverside	St. Clair	87-T-1286-N	SMD	5	1/13/88	7/19/04	
Rockford	Coosa	87-T-1287-N	MMD	5	9/13/88	4/5/07	2007 WL 1394428
Russellville	Franklin	87-T-1288-N	SMD	5	3/22/88	7/18/05	

Rutledge	Crenshaw	87-T-1289-N	LV	5	1/27/88	4/5/07	2007 WL 1394432
Sheffield	Colbert	87-T-1290-N	SMD	5	4/26/88	10/31/06	
Silas	Choctaw	87-T-1291-N	LV	5	5/11/88	8/23/06	2006 WL 2882440
Springville	St. Clair	87-T-1293-N	SMD	7	6/7/88	10/31/06	2006 WL 3408244
Sulligent	Lamar	87-T-1294-N	SMD	5	7/31/89	7/26/04	
Tallassee	Elmore	87-T-1297-N	SMD	7	8/15/88	6/14/04	
Tarrant	Jefferson	87-T-1298-N	SMD	5	5/31/88	6/13/03	
Thomaston	Marengo	87-T-1299-N	SMD	5	8/1/88	7/22/04	
Thomasville	Clarke	87-T-1300-N	SMD	5	8/29/88	7/11/03	
Town Creek	Lawrence	87-T-1301-N	SMD	5	9/22/88	12/13/04	
Toxey	Choctaw	87-T-1302-N	LV	5	5/11/88	8/23/06	2006 WL 3404802
Tuscumbia	Colbert	87-T-1304-N	SMD	5	2/24/93	2/24/93	
Valley	Chambers	85-T-1332-N	SMD	7	12/12/88	1/6/92	
Vincent	Shelby	87-T-1305-N	SMD	5	7/25/90	5/22/06	
Wadley	Randolph	87-T-1306-N	SMD	5	6/23/88	5/11/92	
Waldo	Talladega	87-T-1307-N	LV	5	7/18/88	4/5/07	708 F. Supp. 1244 (1988); 2007 WL 1394439
Warrior	Jefferson	87-T-1308-N	SMD	5	4/18/90	5/25/04	
Waverly	Chambers	87-T-1310-N	LV	5	5/17/88	4/6/07	2007 WL 1346613
Webb	Houston	87-T-1311-N	LV	5	4/1/88	4/5/07	2007 WL 1394472
Wedowee	Randolph	87-T-1312-N	SMD	5	4/29/88	9/9/04	
West Blocton	Bibb	87-T-1313-N	SMD	5	6/17/88	3/2/93	
Wetumpka	Elmore	87-T-1314-N	SMD	5	1/8/88	7/15/03	

Wilsonville	Shelby	87-T-1315-N	PAL	7	8/11/88	10/6/06	2006 WL 2882370
Wilton	Shelby	87-T-1316-N	SMD	5	4/13/88	5/25/04	