

IN THE  
**Supreme Court of the United States**

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JOHN H. MERRILL, in his official capacity as Secretary of State of Alabama, ET AL.,  
*Applicants,*

v.

EVAN MILLIGAN, ET AL.,  
*Respondents.*

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**APPENDIX TO RESPONDENTS' OPPOSITION TO EMERGENCY  
APPLICATION FOR STAY PENDING RESOLUTION OF DIRECT APPEAL  
TO THIS COURT**

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DEUEL ROSS  
\*COUNSEL OF RECORD  
NAACP LEGAL DEFENSE &  
EDUCATIONAL FUND, INC.  
700 14th Street N.W. Ste. 600  
Washington, DC 20005  
212-965-7712  
DROSS@NAACPLDF.ORG

SAMUEL SPITAL  
LEAH ADEN  
STUART NAIFEH  
KATHRYN SADASIVAN  
BRITTANY CARTER  
NAACP LEGAL DEFENSE &  
EDUCATIONAL FUND, INC.  
40 Rector Street, 5th Floor  
New York, NY 10006

DAVIN M. ROSBOROUGH  
JULIE A. EBENSTEIN  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
125 Broad St.  
New York, NY 10004

David D. Cole  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
915 15th Street NW  
Washington, DC 20005

JESSICA L. ELLSWORTH  
DAVID DUNN  
SHELITA M. STEWART  
HOGAN LOVELLS US LLP  
555 Thirteenth Street, NW  
Washington, DC 20004

*Counsel for Respondents*

February 2, 2022

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*Additional counsel listed on inside cover*

LATISHA GOTELL FAULKES  
KAITLIN WELBORN  
AMERICAN CIVIL LIBERTIES UNION  
OF ALABAMA  
P.O. Box 6179  
Montgomery, AL 36106-0179

SIDNEY M. JACKSON  
NICKI LAWSEN  
WIGGINS CHILDS PANTAZIS  
FISHER & GOLDFARB, LLC  
301 19th Street North  
Birmingham, AL 35203

*Counsel for Respondents*

MICHAEL TURRILL  
HARMONY A. GBE  
HOGAN LOVELLS US LLP  
1999 Avenue of the Stars  
Suite 1400  
Los Angeles, CA 90067

BLAYNE R. THOMPSON  
HOGAN LOVELLS US LLP  
609 Main St., Suite 4200  
Houston, TX 77002

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

EVAN MILLIGAN, *et al.*,

Plaintiffs,

v.

JOHN H. MERRILL, *et al.*,

Defendant.

Case No. 2:21-cv-01530-AMM

**JOINT STIPULATED FACTS FOR  
PRELIMINARY INJUNCTION PROCEEDINGS**<sup>1</sup>

Pursuant to this Court’s November 23 scheduling order, Doc. 40 at 10, the parties in the above captioned case submit the following joint statement of facts that are stipulated for purposes of preliminary injunction proceedings:

**I. Plaintiffs**

**A. Evan Milligan**

1. Plaintiff Evan Milligan is Black.
2. Plaintiff Evan Milligan resides in Montgomery County, Alabama.

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<sup>1</sup> For all cases and court opinions cited herein, no party has agreed to stipulate to the accuracy of any court’s prior factual findings, and all parties reserve the right to present evidence disputing such findings.

3. Plaintiff Evan Milligan is a U.S. citizen and a lawfully registered voter in Congressional District (“CD”) 7.

4. Under the Plaintiffs’ Demonstrative Plan in ¶ 88 of the Complaint, Plaintiff Milligan would reside in a second, new majority-Black district.

**B. Shalela Dowdy**

5. Plaintiff Shalela Dowdy is Black.

6. Plaintiff Shalela Dowdy resides in Mobile County, Alabama.

7. Plaintiff Shalela Dowdy is a U.S. citizen and a lawfully registered voter in CD 1.

8. Under the Plaintiffs’ Demonstrative Plan in ¶ 88 of the Complaint, Plaintiff Milligan would reside in a second, new majority-Black district.

**C. Letetia Jackson**

9. Plaintiff Letetia Jackson is Black.

10. Plaintiff Letetia Jackson resides in the City of Dothan, Alabama.

11. Plaintiff Letetia Jackson is a U.S. citizen and a lawfully registered voter in CD 2.

**D. Khadidah Stone**

12. Plaintiff Khadidah Stone is Black.

13. Plaintiff Khadidah Stone resides in Montgomery County, Alabama.

14. Plaintiff Khadidah Stone is a U.S. citizen and a lawfully registered voter in CD 2.

15. Under the Plaintiffs' Demonstrative Plan in ¶ 88 of the Complaint, Plaintiff Milligan would reside in a second, new majority-Black district.

**E. Greater Birmingham Ministries (“GBM”)**

16. Plaintiff GBM was founded in 1969 in response to the challenges posed by the mid-twentieth century Civil Rights movement and its transformative impact in Birmingham, Alabama, and across the United States. GBM describes itself as a multi-faith, multi-racial, non-profit membership organization that provides emergency services to people in need and engages people to build a strong, supportive, engaged community and a more just society for all people.

17. GBM describes itself as seeking to address urgent human rights and social justice needs in the greater Birmingham area. GBM describes itself as dedicated to advancing social justice through political participation across Alabama. GBM states that it actively opposes state laws, policies, and practices that it believes result in the exclusion of vulnerable groups or individuals from the democratic process.

18. GBM states that to accomplish its goals, it regularly communicates with its members and works to register, educate, and increase voter turnout and efficacy,

particularly among Black, Latinx, and low-income people and people with disabilities.

**F. The Alabama State Conference of the N.A.A.C.P. (“Alabama NAACP”)**

19. Plaintiff Alabama NAACP is the state conference of the National Association for the Advancement of Colored People, Inc. The Alabama NAACP is the oldest and considers itself one of the most significant civil rights organizations in Alabama, and it states that it works to ensure the political, educational, social, and economic equality of Black Americans and all other Americans.

20. The Alabama NAACP states that two of its central goals are to eliminate racial discrimination in the democratic process, and to enforce federal laws and constitutional provisions securing voting rights. The Alabama NAACP claims that it advances its goals in part by participating in lawsuits, and that it regularly engages in efforts to register and educate voters and encourages Black people to engage in the political process by turning out to vote on Election Day.

**II. Defendants**

**A. John H. Merrill**

21. Defendant John H. Merrill is the Alabama Secretary of State and the chief elections official in the State of Alabama. Secretary Merrill is sued in his official capacity.

22. Secretary Merrill provides uniform guidance for election activities in the State and certifies the elections of members to the Alabama Legislature and Congress. Ala. Code §§ 17-1-3, 17-12-21. Secretary Merrill also has responsibility for certifying the names of primary and general election candidates for the State Legislature and Congress, as well as issuing Certificates of Election following tabulation of vote results. Ala. Code §§ 17-13-5(b), 17-9-3(b), Ala. Code § 17-12-21.

**B. Sen. Jim McClendon and Rep. Chris Pringle**

23. Defendants Senator Jim McClendon and Representative Chris Pringle are Co-Chairs of the Alabama Permanent Legislative Committee on Reapportionment (“the Committee”). Ala. Code § 29-2-51. They are sued in their official capacity as co-chairs of the Committee.

24. In that capacity, Sen. McClendon and Rep. Pringle led the Committee that was responsible for the preparation and development of redistricting plans for the State following the decennial census and presided over the meetings of the Committee. The Committee was tasked with making a “continuous study of the reapportionment problems in Alabama seeking solutions thereto” and reporting its investigations, findings, and recommendations to the Legislature as necessary for the “preparation and formulation” of redistricting plans for the Senate, House, and congressional districts in the State of Alabama. Ala. Code §§ 29-2-51, 29-2-52.



### **III. Demographics of Alabama**

#### **A. Citizenship and Age by Race/Ethnicity**

25. Alabama's population shifts between every census.

26. Between the 2010 and 2020 census, Alabama's population increased from 4,779,736 to 5,024,279, a 5.1 percent increase.

### **IV. Alabama's Congressional Districts**

27. From 1965 through 2013, Alabama was a covered jurisdiction under Section 5 of the Voting Rights Act, and Alabama's congressional plans therefore had to be precleared by the U.S. Department of Justice or a three-judge federal court in Washington, D.C.

28. Since 1973, Alabama has had seven congressional seats. For each of the six congressional plans Alabama has had since the 1970 census, including the plan enacted in 2021, the plan has included all of Mobile, Baldwin, Washington, and Monroe Counties in CD 1. Likewise, in each plan, CD 2 has included all of Conecuh, Butler, Crenshaw, Covington, Pike, Bullock, Barbour, Coffee, Dale, Geneva, Henry, and Houston Counties; and CD 3 has included all of Calhoun, Cleburne, Talladega, Clay, Randolph, Tallapoosa, Chambers, Macon, Lee, and Russell Counties.

#### **A. The History of the Majority-Black Congressional District 7**

29. In 1992, Black voters and others challenged the failure of the State Legislature to redistrict congressional seats after the release of the 1990 census under

the Fourteenth Amendment to the U.S. Constitution and the lack of a majority-Black congressional district under Section 2 of the Voting Rights Act.

30. On March 9, 1992, upon the stipulation of the parties, the three-judge court ordered the creation of CD 7 as a majority-Black congressional district to resolve the litigation. *See Wesch v. Hunt*, 785 F. Supp. 1491, 1498 (S.D. Ala.), *aff'd sub nom. Camp v. Wesch*, 504 U.S. 902 (1992).

31. Concerning the parties to the case, the court noted as follows: “The Intervenor–Plaintiffs, Michael Figures and others, are African–American citizens of the United States and the State of Alabama. They have been allowed to intervene in this litigation both on their own behalf and on behalf of all African–American citizens of the State of Alabama.” *Id.* at 1494.

32. Under the 1992 Plan established by the *Wesch* court, Black people were 67.69% of the total residents of CD 7 and 63.58% of CD 7’s voting age population (“VAP”). 785 F. Supp. at 1496.

33. The *Wesch* court did not conduct a Section 2 analysis. *Id.* at 1498-99. Rather, the court cited the parties’ stipulation that it was possible to draw a majority-Black VAP district, *id.*, and, thereafter, adopted a legislative proposal for CD 7. *Id.* at 1495.

34. Prior to the *Wesch* court establishing the 1992 Plan, however, the State Legislature did enact Act No. 92-65 (1992), a congressional redistricting plan with one majority-Black district.

35. The *Wesch* court adopted its own plan and created a majority-Black CD 7 due to a concern that Act No. 92-65 would not obtain the required preclearance under Section 5 of the Voting Rights Act in time for the then-upcoming election deadlines. 785 F. Supp. at 1500.

36. One of the plans submitted to the court had two majority-black districts. The court found: “The Hilliard Plan includes two majority African–American districts, with an African–American population of 59.33% and 61.98% respectively. Although this plan was submitted by the intervenors, they took the position that the Hilliard Plan probably provided obstacles of sufficient nature to cast doubt on their opportunity to elect candidates of their choice in these districts.” *Id.* at 1496.

37. Only two of the plans submitted by the parties achieved population equality, the “Pierce Plan” and the “Reed Plan,” each of which had a district that was more than 65% black population. *Id.* at 1495-96. According to the *Wesch* court, the Pierce Plan was a “modification of a plan called the ‘Larry Dixon Plan’ which was considered by the Reapportionment Committee. The Pierce Plan modified the Larry Dixon Plan to some extent, but the basic format is similar.” *Id.* at 1495.

38. The court found that the Pierce Plan that was ultimately adopted was superior to the Reed Plan because “District 1 under the Reed Plan includes Mobile County to the south and Tuscaloosa County to the north. District 2 under the Pierce Plan is largely composed of counties in the southeast corner of the state, while the Reed Plan’s District 2 stretches from Mobile County, in the extreme southwest corner of the State, to Lee County, in east central Alabama. The Pierce Plan is superior to the Reed Plan in terms of compactness.” *Id.* at 1496.

39. The Court also found that the Reed Plan split more counties and precincts than the Pierce Plan and that the Pierce Plan did a better job of preserving the core of districts and communities of interest. *Id.* at 1496-97.

40. On March 27, 1992, the U.S. Attorney General objected to Act No. 92-65 under Section 5 of the Voting Rights Act. The Attorney General found that Act No. 92-65 was the product of intentional racial discrimination because it drew only one majority-Black district and “fragmented” the rest of the Black population in the state to dilute the Black vote. In the objection letter, the U.S. Attorney General noted a “concern” of the Black community that “an underlying principle of the Congressional redistricting was a predisposition on the part of the state political leadership to limit black voting potential to a single district.”

41. During this time, the Department of Justice was applying a “max-black” policy.

42. Because the state did not obtain preclearance for Act No. 92-65 nor enact another plan, the *Wesch* court's 1992 Plan remained in effect for the remainder of the 1990s.

43. In each redistricting cycle from at least the 1990 census through the 2020 census, some Black legislators and voters have lobbied for plans that include two Black-majority districts.

44. After the establishment of CD 7 as a majority-Black district in the 1992 Plan, Earl Hillard became the first Black Alabamian to be elected to Congress in the Twentieth Century.

45. After the 2000 redistricting cycle, the State Legislature enacted the 2002 Plan wherein Black people constituted 62.389% of the total population and 58.327% of the voting age population under the 2000 census.

46. The 2002 Plan received preclearance under Section 5 of the Voting Rights Act.

47. In the general congressional elections of 2002, 2004, 2006, and 2008, Artur Davis, a Black Democrat, was elected in CD 7 after winning a majority of Black voters.

48. In each of the general congressional elections of 2002, 2004, 2006, and 2008, Representative Davis won election with no less than 74.9% of the vote.

49. In the November 2010 general congressional election, Terri Sewell, a Black Democrat, was elected in CD 7 after winning a majority of Black voters.

50. In the November 2010 general congressional election, Representative Sewell won election in CD 7 with 72% of the vote, beating her white opponent by 45 points.

51. In 2010, CD 7 under the 2002 Plan had a Black voting-age population (“BVAP”) of 60.11%.

52. After the release of the 2010 census, the State Legislature enacted the 2011 Plan. The 2011 Plan increased the BVAP of CD 7 to 60.91% any-part Black and 60.55% single-race Black, according to 2010 Census data.

53. In September 2011, the Alabama Attorney General’s office sent a letter and related materials to the U.S. Department of Justice, which submitted the 2011 Plan for preclearance review under Section 5 of the Voting Rights Act (hereinafter, the “submission letter”).

54. The submission letter stated that the 2011 Plan “preserves the voting strength of the African-American community” and that the “percentage of total black and black voting age population in the new [2011] plan increased from the benchmark [2002 Plan] figures. That increase plainly cannot be regarded as retrogressive.”

55. The submission letter likened the CD 7 in the 2011 Plan to the CD 7 in the “1992 *Wesch* court plan and the [2002] plan” because “the new [2011] plan has one African-American majority district, District 7, which is located in the west central part of the state.”

56. The submission letter did not include a racial polarization analysis or otherwise attempt to demonstrate that maintaining the effectiveness of CD 7 required increasing the total Black or BVAP population in that district.

57. The 2021 Plan enacted in HB 1 contains one majority-Black district with a BVAP of 55.3% any-part Black and 54.22% single-race Black under the 2020 census and assigns 30.86% of all single-race Black Alabamians to CD 7.

58. CD 7 remains the only majority-BVAP congressional district in Alabama.

59. In the 2021 Plan, the State Legislature sought to maintain the cores of each congressional district as they were drawn in the 2011 Plan.

60. The Black Belt is named for the region’s fertile black soil. The region has a substantial Black population because of the many enslaved people brought there to work in the antebellum period. All the counties in the Black Belt are majority- or near majority-BVAP.

61. The Black Belt includes the core counties of Barbour, Bullock, Butler, Choctaw, Crenshaw, Dallas, Greene, Hale, Lowndes, Macon, Marengo,

Montgomery, Perry, Pickens, Pike, Russell, Sumter, and Wilcox. Clarke, Conecuh, Escambia, Monroe, and Washington counties are sometimes included within the definition of the Black Belt.

62. In recent litigation, Secretary Merrill stated that CD 7 “appears to be racially gerrymandered, with a finger sticking up from the black belt for the sole purpose of grabbing the black population of Jefferson County. Defendant does not believe that the law would permit Alabama to draw that district today if the finger into Jefferson County was for the predominate purpose of drawing African American voters into the district.” Secretary of State Merrill’s Pretrial Brief, *Chestnut v. Merrill*, No. 2:18-CV-00907 (N.D. Ala. Oct. 28, 2019), ECF No. 101 at 11.

### **B. Congressional Districts 1, 2, and 3**

63. In 2010, CDs 1, 2, and 3 under the 2001 Plan contained a combined AP Black population of 629,911, which was 92.3% of the ideal total population for a single congressional district, calculated by dividing the total population by the number of congressional districts. In 2010, CDs 1, 2, and 3 under the 2001 Plan contained a combined SR Black population of 615,896, which was 90.1% of the ideal total population for a single congressional district. This count includes Black voters in Mobile and Black voters in Anniston.



64. According to 2010 Census data, CDs 1, 2, and 3 under the 2011 Plan contained a combined any-part Black population of 575,923, which is 84.3% of the total population of an ideal congressional district. Those districts contained a combined single-race Black population of 561,978, which is 82.3% of the total population of an ideal congressional district. This count includes Black voters in Mobile and Black voters in Anniston.

65. The 2001 Plan split Montgomery County among two districts: CDs 2 and 3. The 2011 Plan split Montgomery County between three congressional districts: CDs 2, 3, and 7. Under the 2021 Plan, Montgomery County is split between two districts: CDs 2 and 7.

### **C. State Board of Education (“SBOE”) Plan**

66. The Alabama SBOE is a nine-member body that sets education policy for Alabama’s K-12 schools. The Governor serves as the president of the SBOE, and the remaining eight members are elected to the Board from single-member districts.

67. In 2021, Alabama adopted an eight-district SBOE Plan (the “2021 SBOE Plan”) with two majority-Black districts, Districts 4 and 5.

68. According to 2020 Census data, District 4 is 51% BVAP, and District 5 is 51% BVAP.

69. In each election since 2011, a Black Democrat won a majority of Black voters and the election in Districts 4 and 5 of the SBOE. District 5 of the SBOE Plan connects the City of Mobile to the Black Belt Counties.

## **V. The Process Leading to the Enactment of H.B. 1**

### **A. Joint Legislative Committee’s Stated Redistricting Criteria**

70. On May 5, 2021, the Permanent Legislative Committee on Reapportionment (the “Committee”)—the Committee responsible for preparing and developing redistricting plans for the State following each decennial census—enacted guidelines for the 2021 redistricting cycle.

71. The guidelines state that they are based on the requirements of the U.S. Constitution, Alabama Constitution, and policies that “are embedded in the political values, traditions, customs, and usages of the State of Alabama.”

72. The criteria for redistricting set by the Committee begin with requirements under the U.S. Constitution and federal law, including compliance with the one-person, one-vote requirement. The Committee instructed that Congressional districting maps “shall have minimal population deviation” and comply with Section 2 of the Voting Rights Act, meaning that districts have “neither the purpose nor the effect of diluting minority voting strength.”

73. The Committee stated that districts cannot be drawn “in a manner that subordinates race-neutral districting criteria to considerations of race, color, or

membership in a language minority group, except that race, color, or membership in a language-minority group may predominate over race-neutral districting criteria to comply with Section 2 of the Voting Rights Act, provided there is a strong basis in evidence in support of such a race-based choice.”

74. Each district must also be “contiguous and reasonably compact,” under the criteria.

75. The criteria next require compliance with the Alabama Constitution, including that:

- a. Districts are “drawn to reflect the democratic will of all the people concerning how their governments should be restructured”;
- b. Districts are drawn based on total population except that voting-age population may be considered to comply with Section 2 of the Voting Rights Act and other laws;
- c. The number of Senate districts is set at 35 and House districts at 105;
- d. All districts must be single-member districts; and
- e. All districts must be contiguous with each other.

76. The criteria require compliance with redistricting policies that are “embedded in the political values, traditions, customs, and usages of the State of

Alabama . . . to the extent that they do not violate or subordinate the foregoing policies prescribed by the Constitution and laws of the United States and of the State of Alabama,” including:

- a. Avoiding contests between incumbents where possible;
- b. Permitting contiguity by water but not point-to-point or long-lasso contiguity;
- c. Respect for “communities of interest, neighborhoods, and political subdivisions to the extent practicable,” with a community of interest “defined as an area with recognized similarities of interests, including but not limited to ethnic, racial, economic, tribal, social, geographic, or historical identities.”
- d. Minimization of the number of counties in each district; and
- e. Preservation of the cores of existing districts.

77. The Committee’s Redistricting Guidelines stated that “In establishing legislative districts, the Reapportionment Committee shall give due consideration to all the criteria herein. However, priority is to be given to the compelling State interests requiring equality of population among districts and compliance with the Voting Rights Act of 1965, as amended, should the requirements of those criteria conflict with any other criteria.”

**B. The 2021 Legislative Process for Redistricting**

78. On August 12, 2021, the U.S. Census Bureau released the results of the 2020 Census.

79. Alabama's population grew by 5.1% between 2010 and 2020.

80. Using population estimates from the Census Bureau, the Committee, under the leadership of Sen. McClendon and Rep. Pringle, began to develop redistricting plans for congressional districts in May of 2021. *See* Ala. Code § 29-2-50(2). Once census data was released in August, that work continued.

81. The Committee consists of members of both the State House and Senate, with the Speaker of the House appointing one House member from each of the seven congressional districts and four additional House members and the Lieutenant Governor appointing one Senator from each of the seven congressional districts and four additional Senators. *See* Ala. Code § 29-2-51(c).

82. The 2021 Reapportionment Committee includes 21 members—15 white Republican members and six Black Democratic members.

83. All Committee meetings must be open to the public. The Committee Guidelines provide that “All interested persons are encouraged to appear before the Reapportionment Committee and to give their comments and input regarding legislative redistricting. Reasonable opportunity will be given to such persons, consistent with the criteria herein established, to present plans or amendments

redistricting plans to the Reapportionment Committee, if desired, unless such plans or amendments fail to meet the minimal criteria herein established.”

84. Between September 1 and 16, before the Committee released draft maps or proposals, the Legislative Reapportionment Office held 28 public hearings across the state.

85. Every hearing, except one that was held at 6:00 pm at the Statehouse in Montgomery, was held between the hours of 9:00 am to 5:00 pm.

86. On October 19, 2021, Plaintiffs the Alabama NAACP and Greater Birmingham Ministries and others sent a letter to the Alabama Permanent Committee on Reapportionment.

87. The letter sought to remind the Committee of obligations under Section 2 of the Voting Rights Act and highlighted what the Plaintiffs believed to be the Committee’s obligation to conduct a racial-polarization analysis to ensure that the redistricting complied with the Voting Rights Act and that the race was used only in a narrowly tailored manner to comply with a compelling state interest.

88. Governor Kay Ivey called the Special Legislative Session on redistricting in Alabama to begin on October 28, 2021.

89. On October 26, 2021, the Committee held its second public meeting of this redistricting cycle. The first public meeting was held in May 2021, when the Committee adopted redistricting guidelines.

90. A member of the Committee, Rep. Chris England, a Black legislator, published the proposed maps on Twitter on October 25, 2021.

91. The Committee released the maps to the public on the day of the Committee meeting.

92. Many Committee members did not see the full proposed maps beyond their own districts and those surrounding their own district until the day before their meeting.

93. Beyond the Committee, the Committee Co-Chairs and their staff met with each incumbent legislator or their staff either in person or online unless the legislator declined to meet.

94. Individual legislators only viewed and provided feedback on draft maps of their districts and adjoining districts, not maps of the entire state.

95. Mr. Dorman Walker has been the Committee's lawyer for the 2011 and 2021 redistricting cycles.

96. Sen. McClendon explained that Mr. Walker told him that racial-polarization analysis was only done by Dr. M.V. "Trey" Hood III for state legislative districts where "it looked like there might possibly be a racial issue."

97. No racial-polarization analysis was conducted for CD 7.

98. No racial-polarization analysis for any districts was provided to Committee members before or during the meeting.

99. Committee members only received demographic and population data for each district.

100. Neither Mr. Walker nor Dr. Hood, who conducted racial-polarization analysis for the state legislative districts, attended the Committee meeting.

101. Rep. Laura Hall, a Black legislator, moved to postpone any vote on the proposed maps until the Committee members and the public had more time to review the maps and accompanying racial-polarization analysis.

102. All the Black Democratic committee members voted in favor of Rep. Hall's motion, which failed because nearly all white Republican committee members voted against it.

103. Each of the maps passed out of Committee.

104. All the Black Democratic members of the Committee voted against each of the maps.

105. The Special Legislative Session for redistricting began two days later, on October 28, 2021.

106. On October 29, 2021, the Alabama House State Government Committee met to discuss the Reapportionment Committee's proposed districting plan for Alabama's U.S. House delegation.

107. The Committee gave the congressional map a favorable report. All the Black Democratic members of the Committee voted against the maps.



108. On November 1, the full House considered the congressional map.

109. The House passed the congressional map by a vote of 65-38.

110. On November 2, 2021, the Senate General Fund and Appropriations Committee considered the State House and congressional maps.

111. The Committee gave both maps a favorable report. All the Black members of the Committee, each of whom is a Democrat, voted against the maps.

112. The next day, November 3, 2021, the full Senate considered the congressional map.

113. Sen. Kirk Hatcher, a Black legislator, offered the demonstrative map prepared by Plaintiffs Greater Birmingham Ministries and the Alabama NAACP as a substitute map. He stated that this map sought to ensure “that all Black Alabamians have an opportunity to elect their preferred congressional representatives.”

114. Sen. Hatcher’s substitute map failed an up-or-down vote. All Black Senators voted in favor of it.

115. The Senate tabled several other substitute maps.

116. The Senate passed the congressional map by a vote of 22-7.

117. All Black senators, each of whom is a Democrat, voted against the map.

## **VI. Other Stipulated Facts**

118. Numerous federal courts in Alabama have found that the state's elections were racially polarized at the time and locations at issue in their respective cases. *See, e.g., Ala. State Conf. of NAACP v. Alabama*, No. 2:16-CV-731-WKW, 2020 WL 583803, at \*17 (M.D. Ala. Feb. 5, 2020) (accepting the undisputed statistical evidence proving the existence of racially polarized voting statewide); *Jones v. Jefferson Cty. Bd. of Educ.*, No. 2:19-cv-01821-MHH, 2019 WL 7500528, at \*2 (N.D. Ala. Dec. 16, 2019) (finding that voting is racially polarized in Jefferson County elections); *United States v. McGregor*, 824 F. Supp. 2d 1339, 1345-46 & n.3 (M.D. Ala. 2011) (finding that voting is racially polarized across Alabama).

119. In 2008, Bobby Bright, a white Democrat, was elected to the U.S. House from CD 2.

120. From 1973 until 2008, white Democrats were elected to the U.S. House from CD 5.

121. In the November 2008 election, Democrats won three of Alabama's seven Congressional districts. White Democrats won in Districts 2 and 5. In the same election, John McCain, a white Republican candidate for President, won a majority of the votes statewide and won the most votes in six of the seven Congressional districts, including Districts 2 and 5. Barack Obama, a Black Democrat, received a majority of votes only in District 7.

122. In 2013 and 2014, Burton LeFlore, a Black Democrat, ran for election to the U.S. House from CD 1, but both times LeFlore was defeated by Bradley Byrne, a white Republican, by wide margins.

123. In 2017, Doug Jones, a white Democrat, was elected to the U.S. Senate in Alabama.

124. In 2018, Black candidates for Lieutenant Governor, State Auditor, and the Public Service Commission lost statewide general elections to white candidates.

125. In the Twentieth century, Black Alabamians have never elected a Black person to Congress outside of the majority-Black CD 7, and only since 1992.

126. In congressional races in the current majority-white CDs 1, 2, and 3, Black candidates have never won election to Congress.

127. For example, in 2020 in District 1, white Republican candidate Rep. Bradley Byrne defeated Black Democratic candidate James Averhart by approximately 29 percentage points in a district that was approximately 25.7% BVAP. The same was true in 2018, with Rep. Byrne defeating Black and Black-preferred candidate Robert Kennedy Jr. by over 26 percentage points.

128. In 2020 in District 2, which is 30.6% BVAP, white Republican candidate Rep. Barry Moore defeated Black Democratic candidate Phyllis Harvey-Hall by over 30 percentage points. In 2018 in District two, white Republican

candidate Rep. Martha Roby defeated Democratic candidate Tabitha Isner by 23 percentage points.

129. In 2020 in District 3, which is 25.8% BVAP, white Republican candidate Rep. Mike Rogers defeated Black Democratic candidate Adia Winfrey by 35 percentage points. Similarly, in 2018, Rep. Rogers defeated Democratic candidate Mallory Hagan by over 27 percentage points.

130. Prior to 1960, the Legislature failed to reapportion for 50 years. As a result, Alabama's entire legislative apportionment scheme was struck down for violating the principle of one person, one vote. *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). On remand, a three-judge court found that, in devising remedial maps to correct the malapportionment, the "Legislature intentionally aggregated predominantly Negro counties with predominantly white counties for the sole purpose of preventing the election of Negroes to [State] House membership." *Sims v. Baggett*, 247 F. Supp. 96, 108-109 (M.D. Ala. 1965).

131. Following *Reynolds* and the 1970 Census, the Legislature again failed to redistrict and a three-judge federal court was forced to draw new district lines. *Sims v. Amos*, 336 F. Supp. 924, 940 (M.D. Ala. 1972). The court rejected the Alabama Secretary of State's proposed map because of its racially "discriminatory effect" on Black voters. *Id.* at 936.

132. In the 1980s, the United States Attorney General denied preclearance under the Voting Rights Act to maps drawn by the Legislature to redistrict State House and Senate maps because of their discriminatory effect on Black voters in Jefferson County and the Black Belt. U.S. Dep't of Justice Ltr. to Ala. Attorney General Graddick, May 6, 1982, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-1520.pdf>.

Shortly thereafter, a three-judge court rejected Alabama's proposed interim remedial state maps in part because Alabama's maps "had the effect of reducing the number of 'safe' black districts" in and near Jefferson County. *Burton v. Hobbie*, 543 F. Supp. 235, 238 (M.D. Ala. 1982).

133. After the 1990 census, the State entered a consent decree to resolve a Voting Rights Act lawsuit filed on behalf of Black voters. *See Brooks v. Hobbie*, 631 So.2d 883, 884 (Ala. 1993).

134. Most recently, after the 2010 census, Black voters and legislators successfully challenged 12 state legislative districts as unconstitutional racial gerrymanders. *See Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1348-49 (M.D. Ala. 2017).

135. Today, Alabama has a majority-vote requirement in all primary elections.

136. Before the Civil War, Black people were barred from voting in the state. After the passage of the Reconstruction Acts and Amendments, Alabama was forced to allow Black men access to the franchise, and the 1867 Alabama Constitution granted every male person over the age of 21—who satisfied the citizenship and residency requirements—the right to vote. This meant that for the first time in Alabama’s history, Black people voted and held public office.

137. In response, white leaders reformed the Democratic party with the intent of “redeeming” the State and re-establishing white supremacy. This was accomplished by using violence to deter Black people from political participation and, once the Redeemers returned to political office, to pass racially discriminatory laws to cement their control.

138. In 1874, Democratic candidates were elected to public office in large numbers. On election day, in Eufaula, Alabama, members of a white paramilitary group known as the White League, killed several unarmed Black Republican voters and turned away thousands of voters from the polls.

139. The following year, in 1875, the Alabama legislature adopted a new state constitution and passed a series of local laws and ordinances designed to strip Black Americans of the civil rights they enjoyed briefly during Reconstruction.

140. At the 1901 Constitutional Convention, 155 white male delegates gathered in Montgomery with the express intention “to establish white supremacy in the State.”

141. The Convention ratified changes to the constitution that required literacy tests as a prerequisite to register to vote and mandated payment of an annual \$1.50 poll tax, which was intended to and had the effect of disenfranchising Black voters. *United States v. Alabama*, 252 F. Supp. 95, 99 (M.D. Ala. 1966).

142. After the United States Supreme Court invalidated white-only primaries in 1944, Alabama passed the “Boswell Amendment” to its Constitution in 1946, adding an “understanding requirement” meant to give registrars broad discretion to deny African Americans the ability to register to vote.

143. After a federal court invalidated the Boswell Amendment in 1949, Alabama replaced its understanding requirement with a literacy test, again with the purpose of preventing African Americans from registering to vote.

144. After the Supreme Court outlawed the white primary in 1944, many Alabama counties shifted to at-large elections, the intent of which was to prevent African Americans from electing their candidates of choice.

145. In 1951, Alabama enacted a law prohibiting single-shot voting in municipal elections, the intent of which was to prevent African Americans from electing their candidates of choice.

146. In 1957, Alabama transformed the boundaries of the city of Tuskegee into a twenty-eight-sided figure designed to fence out African Americans from the city limits and ensure that only white residents could elect city officials. *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

147. In 1964 and 1965, Dallas County Sheriff Jim Clark, Alabama state troopers, and vigilantes violently assaulted peaceful Black protesters attempting to gain access to the franchise.

148. On March 7, 1965, in what became known as Bloody Sunday, state troopers viciously attacked and brutally beat unarmed peaceful civil rights activists crossing the Edmund Pettus Bridge in Selma, where less than 5 percent of Black voters were registered to vote. Bloody Sunday helped pave the way for the passage of the Voting Rights Act in 1965 and Alabama was declared a “covered” state under Section 4(b) of the Act.

149. Between 1965 and 2013, at least 100 voting changes proposed by Alabama state, county or city officials were either blocked or altered pursuant to Section 5 of the Voting Rights Act. No objection was raised after 2008. The objections include at least 16 objections between 1969 and 2008 in cases where a proposed state or local redistricting plan had the purpose or would have the effect of diminishing the ability of Black voters to elect their candidates of choice. The last sustained objection to an Alabama state law occurred in 1994.



150. In 1986, a court found that the state laws requiring numbered posts for nearly every at-large voting system in Alabama had been intentionally enacted to dilute Black voting strength, and that numbered posts had the effect of diluting Black voting strength in at-large elections. *Dillard v. Crenshaw Cty.*, 640 F. Supp. 1347, 1357 (1986). The court also found that from the late 1800s to the 1980s, Alabama had purposefully manipulated the method of electing local governments as needed to prevent Black citizens from electing their preferred candidates. *Id.*

151. Ultimately, a defendant class of 17 county commissions, 28 county school boards, and 144 municipalities were found to be employing at-large election systems designed and motivated by racial discrimination. These cases resulted in settlement agreements with about 180 Alabama jurisdictions that were required to adopt new election systems including single-member districts, limited voting, and cumulative voting systems, in an attempt to purge the state's election systems of intentional discrimination.

152. Between 1965 and 2021, subdivisions in Alabama continued to use at-large elections with numbered posts.

153. Federal courts recently ruled against or altered local at-large voting systems with numbered post created by the State Legislature to address their alleged racially discriminatory purpose or effect. *See, e.g., Jones*, 2019 WL 7500528, at \*4;

*Ala. State Conf. of the NAACP v. City of Pleasant Grove*, No. 2:18-cv-02056, 2019 WL 5172371, at \*1 (N.D. Ala. Oct. 11, 2019).

154. Black voters have challenged other Alabama voting laws under the Voting Rights Act and the Constitution in federal court. *See, e.g., People First of Alabama v. Merrill*, 491 F. Supp. 3d 1076, 1106-1107 (N.D. Ala. 2020); *Harris v. Siegelman*, 695 F. Supp. 517, 530 (M.D. Ala. 1988). For example, the Supreme Court struck down Alabama's discriminatory misdemeanor disfranchisement law, *Hunter v. Underwood*, 471 U.S. 222 (1985), and a state law permitting certain discriminatory annexations, *Pleasant Grove v. United States*, 479 U.S. 462, 466-67 (1987).

155. In 2020, the United States District Court for the Middle District of Alabama held as follows in a case where plaintiffs argued that Section 2 of the Voting Rights Act requires Alabama to elect state appellate judges by districts:

Alabama today is a vastly different place than it was even a half-century ago. Overt discriminatory election devices have long been eliminated. Voter registration and turnout rates among African-Americans and whites have reached parity. . . . In 2017, Doug Jones became the first Democrat to win a U.S. Senate seat in Alabama in a quarter century, in an election in which African-American votes were decisive. Plaintiffs simply have not shown that, in present-day Alabama, there are any barriers keeping African Americans from participating in the political process as voters. The level of black participation in the electoral process is not depressed.

156. *Alabama State Conf. of Nat'l Ass'n for Advancement of Colored People v. Alabama*, No. 2:16-CV-731-WKW, 2020 WL 583803, at \*41 (M.D. Ala. Feb. 5, 2020) (citations omitted).

157. Since the *Shelby County v. Holder* decision in 2013, federal courts have ordered more than one political subdivision in Alabama to be re-subjected to preclearance review under Section 3(c) of the Voting Rights Act. *See Jones*, 2019 WL 7500528, at \*4-5; *Allen v. City of Evergreen*, No. 13-0107, 2014 WL 12607819, at \*2 (S.D. Ala. Jan. 13, 2014).

158. Individuals with lower household incomes are less likely to vote.

159. Alabama's policy of denying Black people equal access to education persisted after the Supreme Court's decision in *Brown v. Board of Education*. In 1956, after a federal court ordered the segregated University of Alabama to admit a Black woman named Autherine Lucy, white people gathered on campus, burned a cross, and marched through town chanting, "Hey, hey, ho, ho, Autherine has got to go!"

160. In 2018, in a case challenging the attempt by the City of Gardendale, which is 85% white, to form a school district separate from Jefferson County's more racially diverse district, the Eleventh Circuit affirmed a finding that "race was a motivating factor" in the city's effort. *Stout v. Jefferson Cnty. Bd. of Ed.*, 882 F.3d 988, 1007-1009 (11th Cir. 2018).

161. Alabama's constitution still contains language that mandates separate schools for Black and white students after a majority of voters rejected repeal attempts in 2004 and 2012, although the provision has not been enforceable for decades.

162. Alabama was the first state ever to be subjected to a statewide injunction prohibiting the state from failing to disestablish its racially dual school system. *Lee v. Macon Cty. Bd. of Ed.*, 267 F. Supp. 458 (M.D. Ala.), *aff'd* 389 U.S. 215 (1967). The order resulted from the court's finding that the State Board of Education, through Governor George Wallace, had previously wielded its powers to maintain segregation across the state. *Id.*

163. A trial court found that for decades, state officials ignored their duties under the statewide desegregation order. *See Lee v. Lee Cnty. Bd. of Educ.*, 963 F. Supp. 1122, 1128-30 (M.D. Ala. 1997). A court also found that the state did not satisfy its obligations to remedy the vestiges of segregation under this order until as late as 2007. *Lee v. Lee County Bd. of Educ.*, 476 F. Supp. 2d 1356 (M.D. Ala. 2007).

164. In 1991, a trial court in *Knight v. Alabama*, 787 F. Supp. 1030 (N.D. Ala. 1991), found that Alabama had failed to eliminate the lingering and continued effects of segregation and discrimination in the University of Alabama and Auburn University, and at the state's public Historically Black Colleges and Universities (HBCUs).

165. In 1995, the trial court issued a remedial decree analogous to the statewide injunction issued in *Lee v. Macon*, and the court oversaw implementation of that order for over a decade. *Knight v. State of Ala.*, 900 F. Supp. 272 (N.D. Ala. 1995). Alabama did not satisfy its obligations under that order until 2006. *Knight v. Alabama*, 469 F. Supp. 2d 1016 (N.D. Ala. 2006).

166. Alabama has never had more than one African-American congressional representative, and no African American has been elected to the U.S. House of Representatives outside of CD 7.

167. There are currently no African-American statewide officials in Alabama.

168. Only two African Americans have been elected to statewide office in Alabama, and both ran as incumbents after first being appointed. No Black person has won statewide office in Alabama since 1996.

169. The overwhelming majority of African-American representatives in the Alabama Legislature come from majority-minority districts.

170. None of the current statewide elected officials are Black. Only two Black people have ever been elected to statewide office. In both instances, the office was associate justice of the Alabama Supreme Court. In 1982 and 1988, the late Justice Oscar W. Adams, Jr. was elected to two consecutive terms; and, in 1994, Justice Ralph D. Cook won an unopposed statewide election. In 2000, both Justice

Cook and the then-recently appointed Justice John England, both Black Democrats, lost elections to white Republican candidates.

171. Kenneth Paschal is a Black Republican who currently represents District 73 in the Alabama House of Representatives. District 73 includes Shelby County. There are currently no Black Republicans in the state Senate or in any statewide elective positions.

172. In 2014, following the Supreme Court's decision in *Shelby County v. Holder*, Alabama's photo identification law went into effect.

173. The United States Bureau of the Census releases data to the states after each census for use in redistricting. This data includes population and demographic information for each census block.

174. Following the 2020 Census, the Census Bureau was statutorily required to release this redistricting data no later than April 1, 2021. 13 U.S.C. § 141. However, in February 2021, the Census Bureau issued a press release stating that it would not release the redistricting data until September 30, 2021. On March 10, 2021, the State of Alabama sued the Census Bureau to require it to comply with the statutory deadline. *See Alabama v. United States Dep't of Com.*, No. 3:21-CV-211-RAH-ECM-KCN, (M.D. Ala.) (three-judge court). On March 15, 2021, the Census Bureau issued a further press release stating it could provide

redistricting data in a legacy format by mid-to-late August 2021. The Census Bureau provided initial redistricting data to Alabama on August 12, 2021.

175. On May 5, 2021, the Reapportionment Committee of the Alabama Legislature passed the Redistricting Guidelines to be used by the Committee during the redistricting process. Those Guidelines passed on a 16-1 vote, with both Republicans and Democrats as well as Black and White legislators supporting the Guidelines.

176. The Reapportionment Committee held 28 public hearings at locations around the state between September 1 and September 16. The public could attend these hearings in person or via videoconference.

177. On October 25, 2021, Alabama Governor Kay Ivey officially called for the Legislature to convene in a special session to address redistricting.

178. On October 26, 2021, the Reapportionment Committee met and considered a draft congressional plan.

179. On October 28, 2021, the special session began and the Congressional Plan (then H.B. 1) was assigned to the House Committee on State Government. On October 29, the Congressional Plan (in addition to three other redistricting plans) was voted out of committee. All Black Representatives on the Committee voted against the map.

180. On November 1, the House of Representatives considered the Congressional Plan. The same day, the House passed the Congressional Plan 65-38; in addition to every Democratic Representative, several Republicans voted against the plan. One Black Representative, Rep. Keith Paschal who is the sole Black Republican legislator, voted in favor of the Congressional Plan.

181. On November 2, the Senate General Fund and Appropriations Committee considered the Congressional Plan. The Plan was voted out of Committee that same day. All Black Senators on the Committee voted against the map.

182. On November 3, the full Senate approved the Congressional Plan 22-7 and forwarded the Plan to Alabama Governor Kay Ivey. All six Black Senators present and Billy Beasley, the sole White Democratic Senator, voted against the map. On November 4, Governor Ivey signed the Congressional Plan into law.

183. Alabama's primary elections—including elections for U.S. Congress—are scheduled for May 24, 2022. Candidates seeking their party's nomination must file a declaration of candidacy with the state party chairman by January 28, 2022. *See Ala. Code § 17-13-5(a).*

184. On Tuesday, July 23, a special election was held to fill a vacancy in District 73 of the Alabama House of Representatives. The winner was Kenneth Paschal, the Republican candidate, who received 2,743 votes. Representative



Paschal is African American. His white Democratic opponent received 920 votes.

District 73 is located in Shelby County, Alabama. Based on 2010 census data, the voting-age population of District 73 was 84.12% white and 9.75% black.

Representative Paschal defeated a white Republican candidate in the primary election by 64 votes. Representative Paschal received 1,476 votes, while his white opponent received 1,412 votes.

DATED this 7th day of Dec. 2021.

Respectfully submitted,

/s/ Deuel Ross

Deuel Ross\*  
NAACP LEGAL DEFENSE &  
EDUCATIONAL FUND, INC.  
700 14th Street N.W. Ste. 600  
Washington, DC 20005  
(202) 682-1300  
dross@naacpldf.org

Leah Aden\*

Stuart Naifeh\*

Kathryn Sadasivan^ (ASB-517-E48T)  
NAACP LEGAL DEFENSE &  
EDUCATIONAL FUND, INC.  
40 Rector Street, 5th Floor  
New York, NY 10006  
(212) 965-2200  
laden@naacpldf.org  
snaifeh@naacpldf.org  
ksadasivan@naacpldf.org

Shelita M. Stewart\*

Jessica L. Ellsworth\*

HOGAN LOVELLS US LLP  
555 Thirteenth Street, NW  
Washington, D.C. 20004  
(202) 637-5600  
shelita.stewart@hoganlovells.com

David Dunn\*

HOGAN LOVELLS US LLP  
390 Madison Avenue  
New York, NY 10017  
(212) 918-3000  
david.dunn@hoganlovells.com

Michael Turrill\*

Harmony A. Gbe\*

/s/ Sidney M. Jackson

Sidney M. Jackson (ASB-1462-K40W)  
Nicki Lawsen (ASB-2602-C00K)  
WIGGINS CHILDS PANTAZIS  
FISHER & GOLDFARB, LLC  
301 19th Street North  
Birmingham, AL 35203  
Phone: (205) 341-0498  
sjackson@wigginschilds.com  
nlawsen@wigginschilds.com

/s/ Davin M. Rosborough

Davin M. Rosborough\*  
Julie Ebenstein\*  
AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
125 Broad St.

New York, NY 10004

(212) 549-2500  
drosborough@aclu.org  
jebenstein@aclu.org

/s/ LaTisha Gotell Faulks

LaTisha Gotell Faulks (ASB-1279-I63J)  
Kaitlin Welborn\*\*  
AMERICAN CIVIL LIBERTIES UNION  
OF ALABAMA  
P.O. Box 6179  
Montgomery, AL 36106-0179  
(334) 265-2754  
tgfaulks@aclualabama.org  
kwelborn@aclualabama.org

Blayne R. Thompson\*

HOGAN LOVELLS US LLP  
609 Main St., Suite 4200  
Houston, TX 77002

HOGAN LOVELLS US LLP  
1999 Avenue of the Stars  
Suite 1400  
Los Angeles, CA 90067  
(310) 785-4600  
michael.turrill@hoganlovells.com  
harmony.gbe@hoganlovells.com

(713) 632-1400  
blayne.thompson@hoganlovells.com

*Attorneys for Plaintiffs*

Anthony Ashton\*  
Anna Kathryn Barnes\*  
NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE  
(NAACP)  
4805 Mount Hope Drive  
Baltimore, MD 21215  
(410) 580-5777  
aashton@naacpnet.org  
abarnes@naacpnet.org

*Attorneys for Plaintiff Alabama State  
Conference of the NAACP*

\* Admitted *Pro hac vice*

^ Request for admission to the Northern District of Alabama forthcoming

Steve Marshall  
*Attorney General*

s/ James W. Davis  
Edmund G. LaCour Jr. (ASB-9182-U81L)  
*Solicitor General*

James W. Davis (ASB-4063-I58J)  
*Deputy Attorney General*  
A. Reid Harris (ASB-1624-D29X)  
Brenton M. Smith (ASB-1656-X27Q)  
Benjamin M. Seiss (ASB-2110-O00W)  
*Assistant Attorneys General*

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ALABAMA  
501 Washington Avenue  
P.O. Box 300152  
Montgomery, Alabama 36130-0152  
Telephone: (334) 242-7300  
Fax: (334) 353-8400  
Edmund.LaCour@AlabamaAG.gov  
Jim.Davis@AlabamaAG.gov  
Ben.Seiss@AlabamaAG.gov  
Reid.Harris@AlabamaAG.gov  
Brenton.Smith@AlabamaAG.gov

***Counsel for Secretary Merrill***

Dorman Walker (ASB-9154-R81J)  
Balch & Bingham LLP  
Post Office Box 78 (36101)  
105 Tallapoosa Street, Suite 200  
Montgomery, AL 36104  
Telephone: (334) 834-6500  
dwalker@balch.com

***Counsel for Jim McClendon and  
Chris Pringle***

## CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system which provides electronic notice of filing to all counsel of record.

This the 7th day of December 2021.

/s/ Deuel Ross

COUNSEL FOR PLAINTIFFS

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA

EVAN MILLIGAN, et al.,	)	
	)	CIVIL CASE NO.
Plaintiffs,	)	2:21-CV-01530-AMM
VS.	)	VIDEO DEPOSITION OF:
JOHN MERRILL, et al.,	)	RANDY HINAMAN
	)	
Defendants.	)	

S T I P U L A T I O N S

IT IS STIPULATED AND AGREED, by and between the parties through their respective counsel, that the deposition of:

RANDY HINAMAN,  
may be taken before LeAnn Maroney, Notary Public, State at Large, at the law offices of Balch & Bingham, 105 Tallapoosa Street, Montgomery, Alabama, 36104, on December 9, 2021, commencing at 9:13 a.m.

December 09, 2021

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1 made no changes to it, it was submitted to be drawn  
 2 up into a bill and prepared to be presented at the  
 3 -- be sent out to the members of the reapportionment  
 4 committee the following Monday and then voted on in  
 5 committee on Tuesday.

6 Q. Were there any changes made to the map  
 7 by the reapportionment committee?

8 A. No.

9 Q. Were there any changes made to the map  
 10 after it was submitted to the legislature?

11 A. No.

12 Q. So the version of the map that you  
 13 completed the week before the special session is  
 14 identical to the version of the map that was  
 15 ultimately enacted that we've marked as Exhibit 5,  
 16 Plaintiff's Exhibit 5, correct?

17 A. Correct.

18 Q. Did you save any drafts of the 2021  
 19 congressional map?

20 A. No, sir. The way Maptitude works is it  
 21 just -- every time you make a change, it saves -- it  
 22 saves the map at that point. So previous iterations  
 23 don't -- don't really exist.

24 Q. Did you print out any copies of any  
 25 drafts?

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1 A. No.

2 Q. Do you have any notes that you took or  
 3 used while drafting the 2021 congressional map?

4 A. No. I mean, I'm sure I had a scrap of  
 5 paper somewhere that said Congressman Moore would  
 6 rather split Escambia and Congressman Carl would  
 7 rather split Monroe. But they were -- all these  
 8 things were so -- there were not very many of them.  
 9 There weren't too many. I didn't need notes to  
 10 remember that.

11 Q. Do you have any of those notes saved?

12 A. No.

13 Q. If you needed to modify the maps now, do  
 14 you have any estimate of about how long that would  
 15 take you to do?

16 A. Modify in what way?

17 Q. For instance, are you familiar with what  
 18 this lawsuit is about?

19 A. Well, it's three different lawsuits, if  
 20 I understand it correctly.

21 Q. What is your understanding of the three  
 22 different lawsuits?

23 A. I think two of the -- well, two of the  
 24 lawsuits I think would have preferred two majority  
 25 black districts. And the Singleton lawsuit would

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1 have preferred sort of a whole county map with  
 2 two -- I would call them influence districts.

3 THE REPORTER: What districts?

4 A. Influence districts

5 Q. Would that be the same as -- I've heard  
 6 "opportunity district." Would "influence district"  
 7 and "opportunity district" be about the same?

8 A. Yes, sir.

9 Q. And what's your understanding of what an  
 10 influence district or opportunity district is?

11 A. It would be a district that would be  
 12 less than a majority of BVAP, but still have a  
 13 substantial population of minorities that could  
 14 potentially impact the election of a candidate of  
 15 their choice.

16 Q. And when we say "minorities" here  
 17 specifically, are we referring to the black voting  
 18 age population?

19 A. Primarily here in Alabama, you would be  
 20 referring to the black voting age population.

21 Q. So if in this case the court were to  
 22 find that the maps do not comply with the Voting  
 23 Rights Act or the 14th Amendment and they needed to  
 24 be modified, do you expect that you would be the one  
 25 that would be asked to make those modifications?

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1 A. I don't have a crystal ball. I can't  
 2 predict the future.

3 Q. Is that something that's covered in your  
 4 contract?

5 A. It is not.

6 Q. If you were asked to modify the map to  
 7 make changes to comply with the Voting Rights Act or  
 8 the 14th Amendment, in that situation, do you have  
 9 any estimate about how long it would take you to do  
 10 that?

11 A. No. I mean, asked by whom?

12 Q. The Alabama state legislature, the  
 13 courts, Mr. Walker, any of us.

14 A. No. I mean, I -- conceptually, I guess  
 15 that would depend on what the court deemed changes  
 16 were.

17 Q. Is that something that you think you  
 18 could complete within a month?

19 A. I would hope so. I don't know.

20 Q. Is it something you think you could  
 21 complete within a week?

22 A. You're asking me a hypothetical about  
 23 something that hasn't happened, and I don't have a  
 24 clue what the changes would be.

25 Q. When you met with Congressman Sewell,













STATE	Sex, Race, and Hispanic-Origin	Total population	Total citizen population	Total registered	Percent registered (Total)	Margin of error <sup>1</sup>	Percent registered (Citizen)	Margin of error <sup>1</sup>	Total voted	Percent voted (Total)	Margin of error <sup>1</sup>	Percent voted (Citizen)	Margin of error <sup>1</sup>
	Female	10,972	9,500	7,005	63.8	1.9	73.7	1.9	6,295	57.4	2.0	66.3	2.0
	White alone	17,042	14,760	10,734	63.0	1.5	72.7	1.5	9,612	56.4	1.6	65.1	1.6
	White non-Hispanic alone	9,615	9,423	7,396	76.9	1.8	78.5	1.8	6,785	70.6	1.9	72.0	1.9
	Black alone	2,700	2,502	1,759	65.1	3.6	70.3	3.6	1,521	56.3	3.8	60.8	3.9
	Asian alone	1,239	821	521	42.1	5.7	63.5	6.8	482	38.9	5.6	58.7	7.0
	Hispanic (of any race)	7,730	5,599	3,538	45.8	2.5	63.2	2.8	2,972	38.4	2.4	53.1	2.9
	White alone or in combination	17,361	15,079	10,928	62.9	1.5	72.5	1.5	9,762	56.2	1.6	64.7	1.6
	Black alone or in combination	2,890	2,692	1,882	65.1	3.5	69.9	3.5	1,636	56.6	3.6	60.8	3.7
	Asian alone or in combination	1,355	937	601	44.4	5.5	64.2	6.4	546	40.3	5.4	58.3	6.6
UTAH	Total	2,320	2,178	1,468	63.3	2.7	67.4	2.7	1,386	59.7	2.8	63.6	2.8
	Male	1,146	1,068	699	61.0	3.9	65.5	4.0	647	56.5	4.0	60.6	4.1
	Female	1,174	1,110	769	65.5	3.8	69.3	3.8	739	62.9	3.9	66.6	3.9
	White alone	2,096	2,000	1,368	65.3	2.8	68.4	2.8	1,293	61.7	2.9	64.7	2.9
	White non-Hispanic alone	1,860	1,832	1,268	68.2	3.0	69.2	2.9	1,203	64.7	3.0	65.7	3.0
	Black alone	40	33	9	B	B	B	B	9	B	B	B	B
	Asian alone	51	18	10	B	B	B	B	10	B	B	B	B
	Hispanic (of any race)	253	180	100	39.4	8.8	55.4	10.6	89	35.3	8.6	49.6	10.6
	White alone or in combination	2,118	2,019	1,378	65.1	2.8	68.2	2.8	1,303	61.5	2.9	64.5	2.9
	Black alone or in combination	48	41	11	B	B	B	B	11	B	B	B	B
	Asian alone or in combination	55	20	13	B	B	B	B	13	B	B	B	B
VERMONT	Total	507	500	365	72.0	3.4	73.0	3.4	342	67.5	3.6	68.4	3.6
	Male	250	247	178	71.2	4.9	72.1	4.9	163	65.5	5.1	66.3	5.2
	Female	257	253	187	72.9	4.7	74.0	4.7	178	69.4	4.9	70.5	4.9
	White alone	477	474	354	74.3	3.4	74.8	3.4	332	69.7	3.6	70.2	3.6
	White non-Hispanic alone	474	470	351	74.1	3.4	74.6	3.4	329	69.4	3.6	69.9	3.6
	Black alone	8	5	1	B	B	B	B	1	B	B	B	B
	Asian alone	11	11	3	B	B	B	B	3	B	B	B	B
	Hispanic (of any race)	6	6	4	B	B	B	B	4	B	B	B	B
	White alone or in combination	485	482	360	74.1	3.4	74.7	3.4	337	69.4	3.6	69.9	3.6
	Black alone or in combination	10	7	1	B	B	B	B	1	B	B	B	B
	Asian alone or in combination	14	14	6	B	B	B	B	6	B	B	B	B
VIRGINIA	Total	6,481	5,974	4,541	70.1	2.4	76.0	2.3	4,275	66.0	2.5	71.5	2.4
	Male	3,084	2,842	2,092	67.8	3.5	73.6	3.5	1,981	64.2	3.6	69.7	3.6
	Female	3,396	3,132	2,449	72.1	3.2	78.2	3.1	2,293	67.5	3.4	73.2	3.3
	White alone	4,526	4,268	3,393	75.0	2.7	79.5	2.6	3,204	70.8	2.8	75.1	2.8
	White non-Hispanic alone	3,979	3,904	3,160	79.4	2.7	80.9	2.6	3,018	75.9	2.8	77.3	2.8
	Black alone	1,237	1,129	764	61.8	5.5	67.7	5.6	722	58.3	5.6	63.9	5.7
	Asian alone	512	409	271	52.9	9.1	66.1	9.6	253	49.4	9.1	61.8	9.9
	Hispanic (of any race)	678	425	271	39.9	8.2	63.8	10.2	218	32.1	7.8	51.3	10.6
	White alone or in combination	4,620	4,362	3,454	74.8	2.7	79.2	2.6	3,248	70.3	2.8	74.5	2.8
	Black alone or in combination	1,304	1,196	805	61.7	5.4	67.3	5.4	748	57.4	5.5	62.5	5.6
	Asian alone or in combination	535	432	287	53.6	8.9	66.4	9.3	269	50.3	8.9	62.3	9.6
WASHINGTON	Total	5,993	5,389	4,029	67.2	2.5	74.8	2.4	3,854	64.3	2.6	71.5	2.5
	Male	2,947	2,638	1,921	65.2	3.6	72.8	3.6	1,806	61.3	3.7	68.5	3.7
	Female	3,046	2,751	2,109	69.2	3.5	76.7	3.3	2,047	67.2	3.5	74.4	3.4
	White alone	4,735	4,413	3,452	72.9	2.7	78.2	2.6	3,309	69.9	2.8	75.0	2.7
	White non-Hispanic alone	4,122	3,985	3,177	77.1	2.7	79.7	2.6	3,070	74.5	2.8	77.0	2.8
	Black alone	257	210	136	53.1	12.3	64.7	13.0	130	50.8	12.3	61.9	13.2
	Asian alone	557	334	213	38.3	8.4	63.9	10.7	210	37.7	8.4	62.8	10.8
	Hispanic (of any race)	680	485	296	43.6	8.2	61.0	9.6	261	38.4	8.1	53.7	9.8
	White alone or in combination	4,928	4,593	3,573	72.5	2.6	77.8	2.5	3,426	69.5	2.7	74.6	2.7
	Black alone or in combination	331	285	170	51.2	10.9	59.5	11.5	164	49.4	10.9	57.4	11.6
	Asian alone or in combination	590	363	227	38.5	8.2	62.5	10.4	224	37.9	8.1	61.6	10.4
WEST VIRGINIA	Total	1,397	1,379	928	66.4	3.4	67.3	3.4	773	55.3	3.6	56.1	3.6
	Male	684	675	457	66.9	4.9	67.7	4.9	379	55.4	5.1	56.1	5.2
	Female	714	704	471	65.9	4.8	66.8	4.8	395	55.3	5.0	56.0	5.1
	White alone	1,324	1,314	879	66.4	3.5	66.9	3.5	735	55.5	3.7	56.0	3.7
	White non-Hispanic alone	1,303	1,301	871	66.9	3.5	67.0	3.5	729	56.0	3.7	56.1	3.7
	Black alone	45	42	26	B	B	B	B	18	B	B	B	B
	Asian alone	5	1	1	B	B	B	B	1	B	B	B	B
	Hispanic (of any race)	23	15	10	B	B	B	B	8	B	B	B	B
	White alone or in combination	1,346	1,336	900	66.9	3.5	67.4	3.5	754	56.0	3.7	56.5	3.7
	Black alone or in combination	54	50	34	B	B	B	B	25	B	B	B	B
	Asian alone or in combination	6	2	2	B	B	B	B	2	B	B	B	B
WISCONSIN	Total	4,538	4,421	3,391	74.7	2.7	76.7	2.6	3,253	71.7	2.8	73.6	2.7
	Male	2,223	2,158	1,616	72.7	3.9	74.9	3.8	1,533	68.9	4.0	71.0	4.0
	Female	2,315	2,263	1,775	76.7	3.6	78.5	3.6	1,720	74.3	3.7	76.0	3.7
	White alone	4,005	3,931	3,119	77.9	2.7	79.3	2.7	3,008	75.1	2.8	76.5	2.8
	White non-Hispanic alone	3,776	3,772	3,020	80.0	2.7	80.1	2.7	2,914	77.2	2.8	77.2	2.8
	Black alone	263	263	126	47.7	12.1	47.7	12.1	114	43.5	12.0	43.5	12.0
	Asian alone	117	73	44	B	B	B	B	44	B	B	B	B
	Hispanic (of any race)	242	173	105	43.5	13.7	61.0	16.0	101	41.7	13.7	58.4	16.2
	White alone or in combination	4,113	4,040	3,192	77.6	2.7	79.0	2.6	3,081	74.9	2.8	76.3	2.8
	Black alone or in combination	318	318	152	47.8	11.0	47.8	11.0	141	44.3	11.0	44.3	11.0
	Asian alone or in combination	138	94	59	42.4	17.1	62.0	20.3	59	42.4	17.1	62.0	20.3
WYOMING	Total	436	427	296	67.9	3.4	69.3	3.4	280	64.1	3.5	65.5	3.5
	Male	217	212	141	65.0	5.0	66.5	5.0	132	61.1	5.1	62.5	5.1
	Female	219	215	155	70.8	4.7	72.1	4.7	147	67.2	4.9	68.4	4.8
	White alone	410	405	280	68.3	3.5	69.2	3.5	265	64.5	3.6	65.4	3.6
	White non-Hispanic alone	379	376	265	70.0	3.6	70.6	3.6	251	66.2	3.7	66.8	3.7
	Black alone	2	2	1	B	B	B	B	1	B	B	B	B
	Asian alone	2	-	-	B	B	B	B	-	B	B	B	B
	Hispanic (of any race)	40	38	23	B	B	B	B	21	B	B	B	B
	White alone or in combination	422	416	290	68.6	3.5	69.6	3.5	273	64.7	3.6	65.7	3.6
	Black alone or in combination	4	3	3	B	B	B	B	3	B	B	B	B
	Asian alone or in combination	4	2	2	B	B	B	B	2	B	B	B	B

<sup>1</sup> This figure added to or subtracted from the estimate provides the 90-percent confidence interval.

NOTES:

A dash "-" represents zero or rounds to zero.

The symbol B means that the base is less than 75,000 and therefore too small to show the derived measure.

Estimates may not sum to totals due to rounding.

For information on confidentiality protection, sampling error, nonsampling error, and definitions, see [https://www.census.gov/programs-surveys/cps/technical-documentation/complete\\_2020.html](https://www.census.gov/programs-surveys/cps/technical-documentation/complete_2020.html)

Source: U.S. Census Bureau, Current Population Survey, November 2020

<sup>1</sup> This figure added to or subtracted from the estimate provides the 90-percent confidence interval.

Source: U.S. Census Bureau, Current Population Survey, November 2020

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

BOBBY SINGLETON, et al., \*  
Plaintiffs, \* 2:21-cv-1291-AMM  
vs. \* January 4, 2022  
\* Birmingham, Alabama  
\* 9:00 a.m.

JOHN MERRILL, in his official \*  
capacity as Alabama Secretary \*  
of State, et al., \*  
Defendants. \*

\*\*\*\*\*  
EVAN MILLIGAN, et al., \*  
Plaintiffs, \* 2:21-cv-1530-AMM

vs. \*  
\*  
JOHN MERRILL, in his official \*  
capacity as Alabama Secretary \*  
of State, et al., \*  
Defendants. \*

\*\*\*\*\*  
MARCUS CASTER, et al., \*  
Plaintiffs, \* 2:21-cv-1536-AMM

vs. \*  
\*  
JOHN MERRILL, in his official \*  
capacity as Alabama Secretary \*  
of State, et al., \*  
Defendants. \*

\*\*\*\*\*  
TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING  
VIA ZOOM CONFERENCE  
VOLUME I  
BEFORE THE HONORABLE ANNA M. MANASCO,  
THE HONORABLE TERRY F. MOORER,  
THE HONORABLE STANLEY MARCUS

**CHRISTINA K. DECKER, RMR, CRR**  
Federal Official Court Reporter  
101 Holmes Avenue, NE  
Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

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Proceedings recorded by OFFICIAL COURT REPORTER, Qualified pursuant to 28 U.S.C. 753(a) & Guide to Judiciary Policies and Procedures Vol. VI, Chapter III, D.2. Transcript produced by computerized stenotype.

**CHRISTINA K. DECKER, RMR, CRR**  
Federal Official Court Reporter  
101 Holmes Avenue, NE  
Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

1 cracking the city of Montgomery, the enacted plan reduces the  
2 BVAP proportion of the District 2 by 4.4 percent, and these  
3 differences -- combination of standards of this degree are  
4 significant.

15:46:52 5 Q Thank you. If we could take down those figures and turn  
6 briefly, Dr. Imai, to your rebuttal report. That's Milligan  
7 Plaintiffs' Exhibit 688-6. What analysis were you asked to do  
8 for this report?

9 A For this report, as asked by the counsel for the  
15:47:14 10 plaintiffs, to conduct the same one-MMD simulation so the  
11 simulation was exactly one majority-minority district and add  
12 additional constraint that two communities of interest are  
13 encouraged to be kept together in that same district. So the  
14 difference between one-MMD simulation I just showed you and  
15:47:37 15 this one will be just this additional constraint that two sets  
16 of counties that were given to be kept together.

17 Q And what were those two sets of counties?

18 A I understand from the counsel for the plaintiffs that the  
19 one of the experts for the defendants expressed opinion that  
15:48:02 20 the Baldwin and Mobile counties to be kept together as one  
21 community of interest. And I also understand from the counsel  
22 that the set of counties that constitute the Black Belt,  
23 there's opinions that they also may constitute a community of  
24 interest. So those two sets of counties. I basically told the  
15:48:25 25 algorithm to keep them together in the same district whenever



1 possible.

2 Q Do you have any -- did you do any additional research, or  
3 do you have any independent opinion on whether those counties  
4 form a community of interest or any other areas form a  
15:48:41 5 community of interest?

6 A No. I do not take any positions on this or no opinion on  
7 this.

8 Q Let's briefly turn to Figure 1-88-6 at 5 to review your  
9 results when taking into account those two identified  
15:48:59 10 communities of interest.

11 A Okay. So here I focus on the last graph that I showed you  
12 just moments ago for one-MMD simulation. So it's the same  
13 figure.

14 Looking at how the decision to split the Montgomery and to  
15:49:15 15 pack black voters into District 7 affects the District 2, the  
16 BVAP proportion of District 2. And you see similar results  
17 again, enacted plan District 2 BVAP is about 30 percent.

18 Now, by taking into account for the communities of  
19 interest these two specific communities of interest that I were  
15:49:36 20 given, the average BVAP proportion for the District 2 is  
21 higher, so it's now 36 percent or so compared to 34 before. So  
22 actually increased under the simulated plan, increased the  
23 average proportion of the BVAP for District 2, and you also see  
24 many more plans that achieves the higher percentage of BVAP for  
15:50:06 25 under the simulated plan.

1 As a result, the difference between the simulated plan and  
2 the enacted plan is now much larger so previously was  
3 4.4 percent, I think. Now it's exceeding 6 percentage point.  
4 And so that this shows that -- again, this is advantage of  
15:50:25 5 simulation analysis is to be able to assess what factor how --  
6 you know, adding a factor in this case community of interest  
7 how that's going to change the conclusion of redistricting  
8 evaluation. And in here, what we see is that adding these two  
9 particular definitions of community of interest increases the  
15:50:47 10 difference between enacted and simulated plan that is under the  
11 simulated plan with people in District 2 could have achieved  
12 much higher BVAP proportion than the enacted plan.

13 Q Thank you very much, Dr. Imai, for your testimony today.

14 One final question: If you could just please summarize the  
15:51:10 15 opinions you formed based on your three sets of simulations and  
16 your research for the Court?

17 A Yes. So my analysis shows that the race played a  
18 predominant role in determining the district boundaries under  
19 enacted plan beyond the purpose of creating one  
15:51:32 20 majority-minority district. The enacted plan does so by  
21 packing a disproportionate number of black voters from the  
22 Montgomery County into the District 7.

23 The consequence of doing that, that particular decision  
24 the way that's being -- the county is split and including the  
15:51:54 25 District 7 is to reduce the Black Voting Age Population of

1 District 2. And this conclusion does not change, even if we  
2 account for the community -- particular community of interest  
3 that I was given.

4 Q Thank you, Dr. Imai.

15:52:18 5 MS. EBENSTEIN: Your Honor, could I have one moment to  
6 confer with co-counsel?

7 JUDGE MARCUS: You sure can.

8 MS. EBENSTEIN: Thank you. Your Honor, we have no  
9 further questions for Dr. Imai today. Thank you.

15:53:01 10 JUDGE MARCUS: Thanks very much.

11 Who is going to proceed with the cross-examination of  
12 Mr. Imai for the Secretary of State?

13 MR. SMITH: Your Honor, Brenton Smith representing the  
14 Secretary of State. I will be conducting Dr. Imai's cross.

15:53:17 15 JUDGE MARCUS: All right. And I take it, Mr. Walker  
16 will he have some after you?

17 MR. SMITH: I'm not sure. We're in separate rooms.  
18 He may, but I will be going first at least.

19 JUDGE MARCUS: That's okay. We will proceed in any  
15:53:30 20 order you and he would like. So we will begin with Mr. Smith  
21 cross-examination.

22 MR. SMITH: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. SMITH:

15:53:37 25 Q Good afternoon, Dr. Imai.

1 sense.

2 Q Thank you, Dr. Imai.

3 Turning to j(iii), this criteria deals with respecting  
4 communities of interest, neighborhoods, and political

16:15:25 5 subdivisions; isn't that right?

6 A That's right.

7 Q And other than the two individual communities identified  
8 in your rebuttal report, do your simulations provide any  
9 constraint for respecting communities of interest?

16:15:38 10 A No.

11 Q Why not?

12 A I am not aware of it. I am not -- I wasn't given any  
13 other definition of community of interest, and I don't study  
14 community of interest, so I have no knowledge of deciding what  
16:15:55 15 community of interest should be provided -- should be provided  
16 to the algorithm.

17 Q You would agree, would you not, Dr. Imai, that this is a  
18 rule that the reapportioning committee follows in conducting  
19 redistricting?

16:16:10 20 A I assume so. That's a guideline.

21 Q Could observing a community of interest be sort of a  
22 confounding variable on your simulations? Could it explain  
23 something that you have attributed to another factor?

24 A Can you clarify what you mean by confounding?

16:16:34 25 Q So you say that -- well, your conclusion depends on race.

1 So you conclude that certain splits, certain compositions of  
2 districts were made on the basis of race?

3 A Uh-huh.

4 Q But your algorithm hasn't made any -- or your methodology  
16:16:46 5 hasn't made any allowance for communities of interest. Is it  
6 possible that respecting communities of interest could explain  
7 something that your simulations are attributing to race?

8 A Right. So the -- my conclusion is that, you know, my  
9 finding is that race played a predominant role beyond the set  
16:17:09 10 of factors that I considered in the algorithms. So that  
11 includes creation of one MMD, as well as two specifics  
12 definitions of community of interest I were given.

13 So beyond those factors, race played a role.

14 Q So but you would agree, would you not, Dr. Imai, that you  
16:17:32 15 did not consider all the factors that the reapportionment  
16 committee itself is supposed to consider according to its  
17 rules?

18 A I'm not aware of those factors, and those factors if they  
19 exist weren't part of my algorithms, that's correct.

16:17:45 20 Q So it may be the case that the Legislature knows that  
21 certain areas share common interests and are a community of  
22 interests, but your method did not consider that, right?

23 A Well, that -- I didn't consider it because that  
24 information wasn't provided to me. But I could consider it if  
16:18:01 25 you give me a specific definition of, you know, other

1 communities of interest definitions, then I could consider it  
2 and then see if that changes the conclusion.

3 Q As it stands today, the analysis that you performed did  
4 not do that, right?

16:18:19 5 A Yeah. So the analysis I included in the rebuttal report  
6 only uses those two specific definitions of communities of  
7 interest that I was given, yes, that's correct.

8 Q Right. Dr. Imai, turning to j(v), Legislature shall try  
9 to minimize the number of counties in each district. Did you  
16:18:38 10 observe this criteria?

11 A Yes.

12 Q How so?

13 A So in the algorithm as I explained, this was categorized  
14 as soft constraint. I basically instructed the algorithm to  
16:18:53 15 prefer a redistricting plan all else equal that has a fewer  
16 number of counties split by the districts.

17 Q But did you say county splits, Dr. Imai?

18 A Yes.

19 Q Is there a difference between minimizing the number of  
16:19:13 20 county splits and minimizing the number of counties in each  
21 district?

22 A Well, that a single county can be split multiple times.

23 Q I think I'm asking a more basic question than that.

24 I understand that you minimize the number of county  
16:19:33 25 splits.

1 A Uh-huh.

2 Q But what this criteria says is that it's trying to  
3 minimize the total number of counties in each district. Do you  
4 understand those to be different things?

16:19:42 5 A Okay. How different is that? I guess? Can you explain?  
6 Sorry.

7 Q Well, okay. So let's say that District 2 has ten counties  
8 in it in the enacted plan?

9 A Uh-huh.

16:20:04 10 Q And two county splits?

11 A Uh-huh.

12 Q Is that different than if your district in your simulated  
13 plans on average have 15 counties in them, but only one county  
14 split?

16:20:15 15 A So that -- so, again, I'm not aware. So I don't want to  
16 interpret this statement because, you know, it can be  
17 interpreted different ways because what do you mean by in each  
18 district, right? So like which district? Or is it some of the  
19 districts -- like some of the numbers across districts? Does  
16:20:44 20 it -- should we double count -- no double count? But that  
21 difference in the definition, maybe that's what you're trying  
22 to get at, doesn't really materially affect my conclusion  
23 because the District 7 has three splits, both enacted and  
24 simulated plan focusing on District 7 because that's the main  
16:21:11 25 finding. And the only difference if both splits the Jefferson

1 County as well as Tuscaloosa County in the very similar way as  
2 I stated. And the only really difference is whether you split  
3 Montgomery County or not. So this definition, which could be  
4 perhaps interpreted different ways by different people. Again,  
16:21:34 5 I am not a lawyer, so I am not going to take any particular  
6 stance on this. But it is not going to affect the conclusion  
7 of my analysis.

8 Q Let me reframe like this, Dr. Imai. Let's assume that the  
9 Legislature prefers a district with seven counties to a  
16:21:53 10 district that has eight counties. Does your simulation make  
11 any adjustment for that?

12 A If that was given as a criteria, then I can adjust my  
13 simulation analysis and rerun it.

14 Q But you haven't included that in the simulation as it's  
16:22:13 15 been run; isn't that right?

16 A Well, that wasn't given as a criteria to me, so, yeah, I  
17 didn't do that.

18 Q Well, Dr. Imai, what I read j(iv) here to say is that the  
19 Legislature shall try to minimize the number of counties in  
16:22:29 20 each district. Do you understand that to mean something other  
21 than the total number of counties?

22 A Total number of counties. Can you provide the definition?  
23 I want to be careful because I don't know exactly definition of  
24 what you're trying to get at. Sorry. I may be confused.

16:22:50 25 Q Well, Dr. Imai, I think --



1 A The number of counties in each district, that number is  
2 defined for each district; is that right? So then the question  
3 is what are you going to do with that, right? Because you  
4 can't have minimize seven different things.

16:23:08 5 Q Okay. So just to clarify, Dr. Imai, you haven't made any  
6 accommodation that would ensure your districts have as few  
7 counties in them as possible; is that right?

8 A I don't understand the question because like, okay, maybe  
9 the way -- maybe I can explain what I did and then that --  
16:23:31 10 because that's what it is. So if that interpretation is  
11 different from your interpretation, then that, you know, that's  
12 what it is, because I don't quite understand the different  
13 interpretation you are trying to get at. Sorry.

14 Q I think let's just move on. It's -- let's move past this.

16:23:48 15 A If you can clarify, so I used -- these are total number of  
16 counties that are being split by districts as a way to, you  
17 know, measure this number of counties in each district. So  
18 that may or may not be the same as the definition that you're  
19 trying to provide, but I couldn't really understand the  
16:24:08 20 difference there. But what I did, though, because it's a total  
21 number of counties that were split by the districts. And then,  
22 you know, another point I would like to make is that that  
23 decision doesn't really affect the conclusion -- main  
24 conclusion of the analysis.

16:24:28 25 Q So your testimony, Dr. Imai, is that not considering some

1 of these redistricting guidelines does not affect your  
2 analysis?

3 A Well, different constraints will not affect the analysis  
4 possibly. You don't know until you do it, right? So there is,  
16:24:50 5 you know, you provide a set of inputs, and then the algorithm  
6 will give you based on those inputs. And if you are asking  
7 like what would happen if I changed the inputs, like I don't  
8 know because I haven't done that. All I can tell you is that  
9 given the inputs that I provided in my report, this is the  
16:25:12 10 results that I got.

11 Q Dr. Imai, let's move on to  $j(v)$ .

12 A Okay.

13 Q And this criteria says, the Legislature shall try to  
14 preserve the cores of existing districts, right?

16:25:25 15 A Right.

16 Q And did you observe this criteria in your simulations?

17 A Yes. As I mentioned, I did incorporate this particular  
18 guideline.

19 Q So you did not consider this; is that right?

16:25:38 20 A That's correct.

21 Q Why not?

22 A Yeah. So as I explained, for the purpose of the analysis,  
23 okay, so this is like my -- the goal -- I'm trying to analyze  
24 whether or not race played a role in creating the districts  
16:25:58 25 under the enacted plan.

1 In order to do that, I need to isolate other factors. So  
2 I need to isolate, you know, I want to just look at how the  
3 race played a role. So I need to isolate other factors.

4 If I impose this constraint, all the factors that went  
16:26:14 5 into the previous plan is going to be carried over, and it's  
6 going to affect my analysis. As a result, I will not be able  
7 to isolate the role the race played in, you know, in drawing  
8 the district boundaries under the enacted plan.

9 Q Dr. Imai?

16:26:35 10 A That's why -- I haven't analyzed the previous plans, so I  
11 have no knowledge of what factors went in there.

12 Q So, Dr. Imai, is it right that if your methodology  
13 considered what the previous plans looked like, the cores of  
14 existing districts, that you would not be able to tell what was  
16:26:55 15 caused as a result of those existing districts and as a result  
16 of race?

17 A I would have a difficult time isolating the role of the  
18 race if I put this constraint.

19 As I said, many factors may have gone into the previous  
16:27:14 20 plan, which I haven't analyzed. And so that will -- you know,  
21 I will inherit all of that into my analysis, which basically,  
22 you know, basically reduces -- get rid of the whole advantage  
23 of simulation analysis is the power to isolate these different  
24 factors, so that's why I didn't do this.

16:27:38 25 Q Dr. Imai, would it be possible to set a limiting

1 constraint so that your simulations preserves 80 percent of the  
2 cores of previous districts?

3 A Yeah. I could -- I could do that. I could incorporate  
4 that constraint, add that to my simulation algorithm, yes.

16:27:58 5 Q But that's not something that you have done?

6 A No.

7 Q Here?

8 A No. If someone provides -- if someone wants to  
9 incorporate the specific definition of core, then, yes, the  
16:28:12 10 algorithm can handle that.

11 Q And so instead, though, your algorithm starts from a blank  
12 slate; is that fair?

13 A Yes. That's -- blank slate meaning like, yeah, from  
14 scratch.

16:28:26 15 Q Right. Right.

16 A Yeah. But if I may add one thing. Is that okay? Or is  
17 that...

18 Q Sure.

19 A So even though I started from the blank slate in my  
16:28:44 20 one-MMD analysis, in my testimony, I mentioned that it was  
21 remarkable to see that one MMD, you know, overlaps in a great  
22 deal with District 7 on the enacted plan, which I assume that  
23 also means that overlaps significantly with the District 7 on  
24 the previous plan. So even though I didn't tell the algorithm  
16:29:08 25 where to create the MMD, when I told the algorithm to get one

1 MMD, it went there, and in the key difference was the  
2 Montgomery.

3 Q So, Dr. Imai, doesn't ignoring some of these factors,  
4 cores of districts, communities of interest, et cetera, doesn't  
16:29:28 5 that guarantee that your simulated plans may not capture a true  
6 representative sample?

7 A So the captures -- I have a mathematical theorem that says  
8 it captures -- you present a plan under the set of criteria  
9 that I specified. If you change the set of criteria, then, you  
16:29:47 10 know, the population of the plans are changed so no longer my  
11 sample is guaranteed to be representative of that new  
12 population, if that makes sense.

13 So the representativeness is all relative to what factors  
14 are used for the simulation.

16:30:05 15 Q Thank you, Dr. Imai. I am going to take these guidelines  
16 down.

17 And then, Dr. Imai, I am going to direct your attention to  
18 page 9 of your report.

19 A Okay.

16:30:20 20 Q Milligan Exhibit 1, M-1.

21 You say in paragraph 26 that you show, quote, the way in  
22 which the enacted plan deviates from the simulated plan implies  
23 that race was a predominant factor in drawing the district  
24 boundaries of the enacted plan. Did I read that correctly?

16:30:48 25 A Yes.

1 Q What do you mean by implies, Dr. Imai?

2 A Presents empirical evidence for that.

3 Q Okay. And, Dr. Imai, this conclusion would apply not only  
4 to the enacted plan, right, but any comparison plan that was  
16:31:11 5 compared to your simulations?

6 A I don't want to say that because it depends on the purpose  
7 of the analysis if that -- I guess I'm not understanding  
8 exactly what you're trying to ask. Sorry.

9 Q So let's say an enacted plan that's different than the  
16:31:35 10 plan that actually is enacted, and you still did the  
11 comparison. You did the comparison exactly the same. Wouldn't  
12 your conclusions apply to that plan, as well?

13 A I -- I feel uncomfortable speculating that because like on  
14 this, I have a plan in front of me. It's really hard for me to  
16:31:54 15 know whether, you know, I don't want to sort of draw conclusion  
16 about something like a hypothetical. I feel uncomfortable  
17 doing that.

18 Q Let me back up. I think I have asked a poor question.

19 A Yeah.

16:32:07 20 Q So what you conclude or what you present here is that if a  
21 plan deviates from your simulated plans, that implies race was  
22 a predominant factor; is that right?

23 A In this particular setting. In this particular, you know,  
24 my analysis setting. I just feel uncomfortable speculating if  
16:32:31 25 there is another plan that looks very different, how do I, you

1 know.

2 Q Sure. Okay.

3 A It really depends on, I don't know. If that makes sense.

4 Because, you know, and also, yeah, so it depends like you have

16:32:47 5 to carefully select what the inputs you want to use for

6 simulation in order to -- because simulation analysis is done

7 for a particular purpose. And so, you know, I just want to --

8 yeah, refrain myself from making that conclusion on that, if

9 that's okay, like a hypothetical question.

16:33:08 10 Q Sure. Let's move on, Dr. Imai. I am going to share my

11 screen again. And this is M-1. This is a copy of your report.

12 And I am going to go to page 10 and Figure 1?

13 A Okay.

14 Q And I would like to zoom out a little. I am going to ask

16:33:36 15 you a few questions about this figure.

16 A Sure.

17 Q So any of the dots on this figure are an outlier, right?

18 A Yeah. That's considered as an outlier under the standard

19 statistical definition.

16:33:50 20 Q And, Doctor, further down in paragraph 28, you conclude

21 that race was a predominant factor in the enacted plan as a

22 result of its BVAP outlier status as illustrated in this

23 figure; isn't that right?

24 A That's right.

16:34:07 25 Q Dr. Imai, what's the highest BVAP in this district in this

**Christina K. Decker, RMR, CRR**

Federal Official Court Reporter

101 Holmes Avenue, NE

Huntsville, Alabama 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

1 dataset that isn't an outlier?

2 A Oh, I didn't -- I don't have that exact number with me.

3 I'm sorry. But -- it's between somewhere 40 and 50.

4 Q Well, we can approximate from the graph, right? So

16:34:28 5 District 2's top whisker, what would you say that approximately  
6 to the BVAP of that point would be, maybe 43 percent?

7 A Yeah, maybe something like that. Yeah.

8 Q And none of the boxes that you talked about that have most

9 of the data in them, none of those boxes break 40 percent BVAP,

16:34:49 10 right?

11 A For the District 2, you mean.

12 Q For any of the districts.

13 A Box, so, yes, District 7 is slightly on it -- maybe -- but  
14 yeah.

16:35:01 15 Q But even if 7 is on it, it's like right --

16 A Yeah. That's correct, yeah.

17 Q So -- and it looks like even the highest outlier for CD 7

18 is -- I don't know, maybe 47 or 48 percent? Do you think

19 that's fair?

16:35:17 20 A That's right. Yeah, that's probably fair, yeah.

21 Q So if CD 7 had a BVAP that was above 50 percent, would it

22 be an outlier?

23 A Again, I -- I'm -- I don't like to speculate hypothetical

24 because, you know, if you change one district, everything else

16:35:40 25 can change, but, yeah.



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

BOBBY SINGLETON, et al., \*  
Plaintiffs, \* 2:21-cv-1291-AMM  
vs. \* January 5, 2022  
\* Birmingham, Alabama  
\* 9:00 a.m.

JOHN MERRILL, in his official \*  
capacity as Alabama Secretary \*  
of State, et al., \*  
Defendants. \*

\*\*\*\*\*  
EVAN MILLIGAN, et al., \*  
Plaintiffs, \* 2:21-cv-1530-AMM

vs. \*  
\*  
JOHN MERRILL, in his official \*  
capacity as Alabama Secretary \*  
of State, et al., \*  
Defendants. \*

\*\*\*\*\*  
MARCUS CASTER, et al., \*  
Plaintiffs, \* 2:21-cv-1536-AMM

vs. \*  
\*  
JOHN MERRILL, in his official \*  
capacity as Alabama Secretary \*  
of State, et al., \*  
Defendants. \*

\*\*\*\*\*  
TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING  
VIA ZOOM CONFERENCE  
VOLUME II  
BEFORE THE HONORABLE ANNA M. MANASCO,  
THE HONORABLE TERRY F. MOORER,  
THE HONORABLE STANLEY MARCUS

**CHRISTINA K. DECKER, RMR, CRR**  
Federal Official Court Reporter  
101 Holmes Avenue, NE  
Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

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**CHRISTINA K. DECKER, RMR, CRR**  
Federal Official Court Reporter  
101 Holmes Avenue, NE  
Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

1 And moving on to the core of existing guidelines. You are  
2 clear in your report and your direct testimony that you did not  
3 consider the cores of existing guidelines; is that right?

4 A No.

09:13:57 5 Q And if race predominated in the design of prior plans,  
6 would recognizing cores and preserving cores that racial  
7 predominance -- sorry. Let me rephrase that. If race  
8 predominated in the design of prior plans?

9 A Uh-huh.

09:14:14 10 Q And you were to adhere to preserving the cores of prior  
11 plans, would that mask the effect of race in the current plan?

12 A Yes, that's possible because I would note -- I would have  
13 no way of separating the race as a factor, like isolating the  
14 impact of race from what went into the prior plan.

09:14:35 15 Q Okay. And Mr. Smith asked you yesterday about whether  
16 preserving cores could be operationalized by preserving  
17 80 percent of the previous district. Are you aware of any  
18 guideline that requires preserving 80 percent or any other  
19 threshold of previous districts?

09:14:55 20 A No.

21 Q Okay. Mr. Smith asked you a series of questions about  
22 your race-blind simulation. If we could just have on the  
23 screen Plaintiffs' Exhibit M-1, 88-1 at 10 which is Figure 1 in  
24 the boxplot that we discussed yesterday. Which districts in  
09:15:22 25 this boxplot do you consider outliers?

1 A The clearest outlier is 7.

2 Q And are there any other outliers here?

3 A The 2 is also outlier according to the, you know, standard  
4 definition in statistics.

09:15:37 5 Q Okay. And this is in your race-blind simulation, correct?

6 A That's correct.

7 Q Okay. Does this finding in your race-blind simulation  
8 reflect any judgment about whether or not it's proper to draw a  
9 particular district, a particular way after the map is adjusted  
09:15:54 10 to have one MMD?

11 A No. So this is completely race-blind. So the conclusion  
12 on the holds with respect to -- the comparison was race-blind  
13 simulation simulated plans.

14 Q Okay. And your race-blind analysis does not incorporate  
09:16:11 15 the state's guideline, which gives priority to compliance with  
16 the Voting Rights Act; is that right?

17 A Right. It doesn't. And that was purpose was, you know,  
18 of this race-blind simulation was just to establish as a first  
19 step whether race played a predominant factor.

09:16:25 20 Q And a few questions about your one-MMD simulation before I  
21 move back to the race-blind simulation.

22 Your one-MMD analysis tried to account for the fact that  
23 the state draws one MMD to comply with the VRA; is that right?

24 A That's correct.

09:16:39 25 Q And your simulation found that even in drawing one MMD

1 that looked like the state's MMD, District 7 included a BVAP  
2 population beyond what was necessary to create a majority-black  
3 district; is that right?

4 A That's right.

09:16:53 5 Q But I believe you said yesterday your analysis did not  
6 consider whether the VRA might require two majority-minority  
7 districts; is that right?

8 A No. No.

9 Q And you didn't perform any analysis of maps that include  
09:17:07 10 two majority-minority districts, right?

11 A No.

12 Q So your analysis wouldn't tell us anything about whether  
13 or not containing two MMDs is an outlier or not compared to  
14 simulations constrained under two MMDs?

09:17:22 15 A No.

16 Q Moving back to the race-blind analysis, and we can take  
17 that boxplot off the screen.

18 If you have your report in front of you in case you would  
19 like to reference it. Mr. Smith asked you questions about your  
09:17:38 20 race-blind analysis with regard to Jefferson County. And he  
21 referenced paragraph 32 of your report. That's M-1, 88-1 at  
22 12. And this paragraph is still in your analysis about your  
23 race-blind simulations; is that right?

24 A That's right.

09:17:54 25 Q Mr. Smith noted that at least eight of the 10,000

1 race-blind simulated plans included more voters from Jefferson  
2 County in District 7 than the enacted plan; is that right?

3 A Yeah. I think so. I'm not 100 percent sure. I don't  
4 recall exact number he cited.

09:18:13 5 Q Okay. I will refer you to paragraph 32 of your report,  
6 where he did accurately cite the number that you gave.  
7 Statistically does the inclusion of the Black Voting Age  
8 Population from Jefferson in eight of the 10,000 race-blind  
9 simulated plans affect whether the enacted plan was an outlier?

09:18:34 10 A Yes.

11 Q How does it affect whether the race-blind simulated plan  
12 was an outlier?

13 A So according to the standard, you know, statistical  
14 criteria, the .08 percent, the fact that only the .08 percent  
09:18:52 15 of simulated plans packs as many residents of Jefferson County.  
16 To this extent, that phenomena is a statistical outlier, that  
17 creates a statistical outlier.

18 Q Okay. So it impacts it in showing that it is, in fact,  
19 a statistical outlier.

09:19:05 20 A Yes, it is -- yeah. Sorry about that.

21 Q Okay. Moving on to your conclusions about Montgomery  
22 County in your race-blind simulation. And this is reflected in  
23 the following paragraph, 33 of your report. What is the  
24 likelihood that Montgomery County would split at all in a  
09:19:25 25 race-blind simulation?

1 A Over 97 percent.

2 Q Over 90 percent that it would stay whole or?

3 A Stay whole. Sorry. Less than 3 percent would be the  
4 property that's being split.

09:19:40 5 Q And statistically, does Mr. Smith's observation that 300  
6 of the 10,000 race-blind simulations split Montgomery County  
7 change your observation that the treatment of Montgomery County  
8 was an outlier in the race-blind analysis?

9 A No.

09:19:58 10 Q Does this outcome in the race-blind analysis already  
11 reported in your report change your overall opinion in this  
12 case at all?

13 A No. According to the standards of statistical criteria,  
14 this difference is statistically sound.

09:20:16 15 Q And just to be clear, in the 97,000 simulated plans in  
16 which Montgomery County remained whole -- sorry -- 9,700  
17 simulated plans in which Montgomery County remained whole, in  
18 9,400 of those plans, the whole county was assigned to District  
19 2 or 6; is that right?

09:20:36 20 A That's correct.

21 Q Is it accurate to say that in your race-blind simulation  
22 and without consideration of race obviously, Montgomery County  
23 is highly unlikely to be included in District 7?

24 A Yes.

09:20:50 25 Q Okay. Just a few more questions. If you could turn to --

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

BOBBY SINGLETON, et al., \*  
Plaintiffs, \* 2:21-cv-1291-AMM  
vs. \* January 10, 2022  
\* Birmingham, Alabama  
\* 9:00 a.m.

JOHN MERRILL, in his official \*  
capacity as Alabama Secretary \*  
of State, et al., \*  
Defendants. \*

\*\*\*\*\*  
EVAN MILLIGAN, et al., \*  
Plaintiffs, \* 2:21-cv-1530-AMM

vs. \*  
JOHN MERRILL, in his official \*  
capacity as Alabama Secretary \*  
of State, et al., \*  
Defendants. \*

\*\*\*\*\*  
MARCUS CASTER, et al., \*  
Plaintiffs, \* 2:21-cv-1536-AMM

vs. \*  
JOHN MERRILL, in his official \*  
capacity as Alabama Secretary \*  
of State, et al., \*  
Defendants. \*

\*\*\*\*\*  
TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING  
VIA ZOOM CONFERENCE  
VOLUME V  
BEFORE THE HONORABLE ANNA M. MANASCO,  
THE HONORABLE TERRY F. MOORER,  
THE HONORABLE STANLEY MARCUS

**CHRISTINA K. DECKER, RMR, CRR**  
Federal Official Court Reporter  
101 Holmes Avenue, NE  
Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com



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**CHRISTINA K. DECKER, RMR, CRR**  
Federal Official Court Reporter  
101 Holmes Avenue, NE  
Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

1 A The exit polls give us additional empirical evidence that  
2 racially-polarized voting did take place in 2008 and 2012  
3 presidential elections, which reconfirm what we found by using  
4 EI technology.

14:29:59 5 Q Okay. In looking at the 2008 election in particular, did  
6 you see anything with respect to how white Democrats voted?

7 A Yes. In 2008, like I said, I not only looked at the  
8 general election between Obama and McCain, but also the  
9 Democratic primary in 2008 between Hillary Clinton and Barack  
14:30:34 10 Obama. Both of them are high profile national figures. It's  
11 very enlightening to see how voters voted, especially in the  
12 Democratic primary in 2008, because both candidates -- Clinton  
13 and Obama -- are Democrats. So I was able to see whether race  
14 played a role. Indeed I saw that Hillary Clinton received  
14:31:02 15 72 percent of white vote.

16 Q And how much support did then Senator Obama receive in the  
17 primary? Sorry, Dr. Liu.

18 How much support did the -- how much support did President  
19 Barack Obama receive in the 2008 Democratic primary from black  
14:31:33 20 voters?

21 A That was 84 percent.

22 Q Okay. And then in the 2008 general election, how much  
23 support did President -- sorry -- Senator McCain receive from  
24 white Democrats specifically?

14:31:48 25 A Yes. He received the majority white support -- I believe

1 it was 50, 51 or -- or 52 percent. Yeah. I can --

2 Q And that's -- that's white Democratic support; is that  
3 right?

4 A Yes. Yes.

14:32:04 5 Q Okay. And how much black support did President Obama  
6 receive in the 2008 election?

7 A It's almost universal. More than 95 percent.

8 Q Okay. In looking at page 13 of your report, Dr. Liu, did  
9 you also analyze -- I think you already mentioned this -- the  
10 election between Senator Sessions and State Senator Figures?

11 A Yes. I did. I also look at the exit poll for that  
12 particular U.S. Senate election. And it showed that Senator  
13 Sessions received overwhelming white support. But more  
14 importantly, even 58 percent white Democratic supported Senator  
14:32:56 15 Sessions. So that shows that race obviously outweighed party  
16 for these white Democrats.

17 Q Thank you, Dr. Liu. And what are your sources for these  
18 exit polls?

19 A I am a scholar of presidential elections. As I said, I  
14:33:17 20 have published a book on Obama. My forthcoming book is about  
21 President Trump. So I have accumulated very large database  
22 myself. My students use my own database. And for exit polls,  
23 every time national medias that publish their exit poll  
24 results, especially CNN, I recorded them in my database.

14:33:44 25 But for this particular report, I also used a double

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

BOBBY SINGLETON, et al., \*  
Plaintiffs, \* 2:21-cv-1291-AMM  
vs. \* January 12, 2022  
\* Birmingham, Alabama  
\* 8:30 a.m.

JOHN MERRILL, in his official \*  
capacity as Alabama Secretary \*  
of State, et al., \*  
Defendants. \*

\*\*\*\*\*  
EVAN MILLIGAN, et al., \*  
Plaintiffs, \* 2:21-cv-1530-AMM

vs. \*  
JOHN MERRILL, in his official \*  
capacity as Alabama Secretary \*  
of State, et al., \*  
Defendants. \*

\*\*\*\*\*  
MARCUS CASTER, et al., \*  
Plaintiffs, \* 2:21-cv-1536-AMM

vs. \*  
JOHN MERRILL, in his official \*  
capacity as Alabama Secretary \*  
of State, et al., \*  
Defendants. \*

\*\*\*\*\*  
TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING  
VIA ZOOM CONFERENCE  
VOLUME VII  
BEFORE THE HONORABLE ANNA M. MANASCO,  
THE HONORABLE TERRY F. MOORER,  
THE HONORABLE STANLEY MARCUS

**CHRISTINA K. DECKER, RMR, CRR**  
Federal Official Court Reporter  
101 Holmes Avenue, NE  
Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

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**CHRISTINA K. DECKER, RMR, CRR**  
Federal Official Court Reporter  
101 Holmes Avenue, NE  
Huntsville, AL 35801

256-506-0085/ChristinaDecker.rmr.crr@aol.com

1 With that, Judge Manasco, any questions or comments?

2 JUDGE MANASCO: Thank you. First, I will echo what  
3 you said about the commendation of the lawyers. I think, you  
4 know, what all of you were able to accomplish would have been  
17:01:57 5 remarkable under any circumstance in this amount of time. But  
6 I am mindful that there were holidays, and there was pandemic  
7 duress, and so I think it was all the more remarkable under the  
8 circumstances.

9 The other thing is I still do have one question. And I  
17:02:13 10 will direct it to Mr. Davis, if he's still with us.

11 But, Mr. Davis, you are free to punt it to any other  
12 person on your team, if you think appropriate. And it's really  
13 just sort of an evidentiary question about the logistics. We  
14 have heard a lot today about timing. And I recall you saying  
17:02:35 15 at one of our earlier proceedings early on in the life of the  
16 case that if any relief were ordered, the Legislature would  
17 want the opportunity to take the first cut at another map. And  
18 so my question is: Is there anything in the record or any  
19 argument you want to make about how long that might take if --  
17:02:59 20 and I underscore the if -- any relief were ordered?

21 MR. DAVIS: Your Honor, there is nothing in the record  
22 to my knowledge that would address that question. I can share  
23 that you would -- we got the census data -- the day we got the  
24 census data is in the record, and the draft congressional plan  
17:03:18 25 was completed soon before the reapportionment committee met.

1 That's not quite apples to apples because the map drawer was  
2 also working on other maps.

3 All I can tell you -- I think it would take at least a  
4 couple of weeks to confer to meet with legislators. The  
17:03:36 5 Legislature will be in session, so we won't have to go through  
6 the Governor to call. But you have to draft the plan, then it  
7 will take several days to get to the Legislature.

8 Mr. Walker, do you have more information that you can  
9 share? I will give you this seat.

17:03:49 10 MR. WALKER: No. Just saying there will be -- it will  
11 be more difficult because --

12 MR. DAVIS: Oh. I think -- it may -- I take it  
13 Mr. Walker's point is however long it took last time had he  
14 been doing just the congressional plan, might take longer since  
17:04:07 15 inevitably an order would require drastic changes. It would  
16 not be a least change. So there would be more the Legislature  
17 has to weigh because it would blow up the map. It would be  
18 completely different from the way things were before.

19 So I couldn't give you anything more than a guess. I  
17:04:26 20 don't see how it could possibly be done within less than a  
21 couple of weeks. But it could be much longer. It could be a  
22 little quicker. That's the best I could do, Judge.

23 JUDGE MANASCO: Understood. Thank you.

24 JUDGE MARCUS: Any other comments or questions about  
17:04:45 25 that from anyone, or, Judge Moorer, any questions?