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U.S. DISTRICT COURT
N.D. OF ALABAMA

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

EVAN MILLIGAN, et al. Plaintiffs, vs. WES ALLEN, in his official capacity as Alabama Secretary of State, et al. Defendants.	Case No.: 2:21-CV-01530-AMM (THREE-JUDGE COURT)

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF OF REPRESENTATIVE TERRI SEWELL AND MEMBERS OF CONGRESSIONAL BLACK CAUCUS OF THE U.S. SENATE AND U.S. HOUSE OF REPRESENTATIVES IN SUPPORT OF PLAINTIFFS' OBJECTIONS TO ALABAMA'S REMEDIAL PLAN

SUMMARY OF ARGUMENT

The redistricting plan Alabama legislators approved on July 21, S.B. 5 ³ W K H Livingston P O D, Qil utes the voting strength of Black voters in Alabama and violates Section 2 of the 9 R W L Q J 5 L J K W V A S F W, S.B. 5 entrenches the historical exclusion of Black Alabamians from participating in our American democracy. Instead of creating a second district where Black voters have an opportunity to elect a Black-preferred candidate, S.B. 5 has created a 38.8% Black voting age population ³ % 9 $ 3 district ² proposed Congressional District 2 ³ & ' ´. With only a 38.8% BVAP share of the electorate, a Black candidate under th H / L Y L Q J V W R Q would be certain to lose.

As expert testimony provided by the Plaintiffs indicates, given the history of racially polarized voting in the precincts that comprise proposed CD 2, a Black candidate is not likely to obtain more than 42.3% of the total vote in that district. The high racial polarization in proposed CD 2 renders impossible electoral victory by any Black-preferred candidate.

The newly enacted congressional district map fails to achieve the goals set forth by the Supreme Court in Allen v. Milligan, 143 S. Ct. 1487 (2023). As this Court has stated in a conclusion endorsed by the Supreme Court, Alabama needs to enact a map that contains two districts where Black voters constitute a majority or ³ V R P H W K L Q J Tit X´ L J Jan. 24, 2022 Milligan Preliminary Injunction

Order, ECF No. D W Order 3 ´. Proposed Congressional District 2 does not remotely come close.

7 K H $ O D E D P D / H J L V O D W X U H ¶ V G H I L D Q F H R I W K demonstrates its ongoing commitment to protecting the political preferences of a white majority. And in signing the bill setting forth S.B. 5 $ O D E D P D ¶ V J R Y H U said the T X L H W S D U W R X W O R X G [3] 7 K H / H J L V O D W X U H districts better than the federal courts [1] ´

ARGUMENT

I. A 38.8%-Black Voting Population District Does Not Allow Black Voters to Elect Their Candidates of Choice in Alabama

That voting is highly racially polarized in Alabama is not in dispute. See PI Order, ECF No. 107 at 174; Ala. State Conf of NAACP v City of Pleasant Grove, 372 F. Supp 3d 1333, 1340 (N.D. Ala. 2019); Jones v Jefferson Cnty Bd. of Educ., No. 2:19-cv-1821-MHH, 2019 WL 7500528, at *2 (N.D. Ala. Dec. 16, 2019); Dillard v. Baldwin Cnty Bd. of Educ, 686 F. Supp 1459, 1465 (M.D. Ala. 1988) The data presented by O D L Q W L I I V ¶ H [S H U [W W K H O & H > X W W @ ¶ Q Y R @ G P R Y R W L Q J L Q $ O D E D P D P V Order at 175 D O O \ S R O D U L] H G ´

Indeed, in six-out-of- V H Y H Q R I $ O D E D P D ¶ V H O H F W R U D preferred candidate always wins. See Liu Report, ECF No. 68-1 at 12 In particular,

[1] Chuck Todd, et al. GOP governors defy Supreme Court, federal government, NBC News (July 25, 2023) https://www.nbcnews.com/meet-the-press/first-read/gop-governors-defy-supreme-court-federal-government-rcna96140.

Black voters. ¶ 3 U H I H U U H G F R Q J U H V V L R Q D O F D Q G L G D W H

Black voters comprise less than 50% of the electorate. Apart from Congressional

' L V W U L FCD7W, where Black voters currently have a 55% majority, Black-

preferred candidates have lost every Congressional district in every congressional

election since the creation of CD7 over thirty years ago. ¶ 3 O D L Q W L I I V ¶

$ O D E D P D ¶ V H [S H U W V D J U H H W K D W Z K L W H E O R F Y

Black-preferred candidates in white-majority districts in Alabama. Hood Report,

ECF No. 66-4 at 14; Liu Report, ECF No. 66-8 at 18; see also PI Order, ECF No.

107 at 174± Q R W L Q J W K D W W K H U H L V Q R G L V S X W H

experts on this issue).

That pattern will be true of Livingston CD2. A F F R U G L Q J W R ' H I H Q G I

evidence and proposed map, the percentage of the population that is Black and over

the age of eighteen (i.e., able to vote) will be only 38.8%, see ' H I V ¶ 6 W D W X V 5 H

ECF No. 186-1 at 2. That composition guarantees that Black-preferred candidates

in CD2 will always be defeated by a politically cohesive white majority.

Moreover, Black-preferred candidates will receive a very small percentage

of white votes in the precincts that are part of Livingston CD2. Liu reviewed

12 statewide elections from 2014-2022 and concluded that the Black-preferred

candidate would only receive 42.3% of the total votes cast in Livingston CD2, and

would thus be defeated by the white-preferred candidate in every election. Liu Remedial Report, ECF No. 200 at 3.

And if the candidate were herself Black, the expert testimony provided by the parties indicates that the candidate will garner even less support than if the candidate were white. Compare Liu Report, ECF No. 200-2, (Black candidates are likely to lose by 11.4% in Livingston Plan CD 2) with ECF No. 201-2, Ex. B (when an election set that includes a mix of Black and non-Black candidates is considered, the Democratic candidate will lose by about 6.8%)

II. Alabama Is Directly Defying W K H 6 X S U H P H & R X U W¶V ' H F L V L Milliga n

There can be no serious doubt that the Republican supermajority in the Alabama Legislature defied the Milligan decision when it enacted S.B. 5. The District Court directed the Alabama Legislature to implement a remedial redistricting scheme that includes W Z R G L V W U L F W V L Q Z K L F K % comprise a voting-D J H P D M R U L W \ R U V R P H Singleton v. Merrill, W H F O 582 F. Supp. 3d 924, 936 (N.D. Ala. 2022), order clarified, No. 2:21-CV-1291 and No. 2:21-cv-1530, 2022 WL 272637 (N.D. Ala. Jan. 26, 2022), and aff'd sub nom Allen v. Milligan, 143 S. Ct. 1487 (2023)). That holding was affirmed and adopted in its entirety by the Supreme Court. Milligan, 143 S. Ct. at D W 3 : H V H H Q R U to disturb the District Court's careful factual findings, which are subject to clear error review and have gone unchallenged by Alabama in any event. Nor is there a

E D V L V W R X S V H W W K H ' L V W U L F W & R X U W .V A O H J D O

set forth above, the Q H Z P D S I D L O V W R D G K H U J U V W K H & R

H.B. 1, S.B. 5 includes only one majority-minority district and continues to dilute

% O D F N $ O D E D P L D Q V ¶ Y R W L Q J S R Z H U

7 K H / H J L V O D W X U H ¶ V W D V N V K R X O G K D X H E H H

³ D W O H D V W H O H Y H Q L O O X V W U D W L Y H U H P H G L D O S

new district lines that would comply with Section 2. *Singleton*, 582 F. Supp. 3d at

1034. The enactment of district lines that suffer from the exact same infirmities as

the district lines that were previously stricken demonstrates that the Alabama

Legislature is steadfastly committed to maintaining a discriminatory redistricting

scheme.

The Supreme Court has previously stated in the voting rights context that

³ > E @ O D W D Q W O \ G L V F U L P L Q D W R U \ Q H Z A u s t i n (T e x .) M u n . V R I I H

Util. Dist. No. One v. Holder*,* 557 U.S. 193, 202 (2009). If so, this is that unfortunate

rare case. In the face of a clear judicial mandate to enact a redistricting scheme that

creates two majority-P L Q R U L W \ G L V W U L F W V R U ³ V R P H W K L Q J

legislature has demonstrated that it remains willing and eager to engage in racially

discriminatory vote dilution in contravention of a federal decree. Such an attempt

P X V W Q R W E H W R O H U D W H G W K H & R X U W ¶ V K R O G L

CONCLUSION

7 K H & R X U W V K R X O G H Q M R L Q $ O D E D P D ¶ V U H G L

Master to redraw a map that complies with the Voting Rights Act

Dated: August 3, 2023

Respectfully submitted,

/s/ J. Mark White
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**Pro Hac Vice pending

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that, on August 3, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and caused to be served by email a copy of this filing to counsel of record.

By /s/ J. Mark White
J. Mark White