

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

EVAN MILLIGAN, et al.,

Plaintiffs,

vs.

WES ALLEN, et al.,

Defendants.

No. 2:21-cv-01530-AMM
(three-judge court)

PLAINTIFFS' NOTICE OF FILING EXHIBITS

The Court's August 5, 2023 Order directs the parties to provide copies of the exhibits and demonstratives they intend to use during the preliminary injunction hearing. Doc. 221 at 2. The order further directs that the exhibits be "file-stamped". *Id.* Pursuant to this Order Plaintiffs respectfully notify the Court and the parties of the following exhibits, which they intend to rely upon at the August 14 hearing but which are not currently on the case docket.

1. Exhibit M16: Dr. M.V. Hood's performance analysis of Community of Interest Plan.
2. Exhibit M17: Defendant Sen. Steve Livingston's Responses to Plaintiffs' Third Set of Interrogatories.

3. Exhibit M20: Defendant Rep. Pringle's Response to Plaintiffs' Third Set of Interrogatories.
4. Exhibit M21: Community of Interest Plan Map.
5. Exhibit M22: Livingston Plan 1 Map.
6. Exhibit M23: Livingston Plan 2 Map.
7. Exhibit M24: Community of Interest Plan Population Summary.
8. Exhibit M25: 2021 Reapportionment Committee Redistricting Guidelines (May 5, 2021).
9. Exhibit M26: Russell Split Plan Map.
10. Exhibit M27: Expanded Black Belt Plan Map.
11. Exhibit M28: Whole Jefferson County Plan Map.
12. Exhibit M29: Email (RC049603-04).
13. Exhibit M30: Text Message (RC049605).
14. Exhibit M31: Caleb Talor. *House, Senate committees narrow redistricting plans down to two* 1819 News (July 18, 2023).
15. Exhibit M32: Alexander Rocha et al., *Alabama Legislature passes controversial congressional map*, ALABAMA REFLECTOR (July 21, 2023).
16. Exhibit M33: Talking points (RC049608-16).
17. Exhibit M35: Proposed amendment to reapportionment committee

guidelines (RC049228).

18. Exhibit M36: July 12, 2023 Reapportionment Committee Agenda (RC049228).
19. Exhibit M38: James Stephenson, et al., *Alabama House, Senate Approve Separate Congressional Maps*, BIRMINGHAM WATCH (July 20, 2023).
20. Exhibit M39: Opportunity Plan Population Summary (RC049515).
21. Exhibit M40: Talking points (RC049571-72).
22. Exhibit M41: Talking points (RC049573-76).
23. Exhibit M42: Talking points (RC049577-80).

Plaintiffs intend to include on their exhibit list additional materials that are already part of the Court docket but file the above in order to provide “file-stamped” copies to the Court.

Respectfully Submitted,

/s/ Deuel Ross

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Counsel for Milligan Plaintiffs

COMMUNITY OF INTEREST PLAN

FILED

2023 Aug-10 AM 09:55
U.S. DISTRICT COURT
N.D. OF ALABAMA

Year	Race	CD2		CD7	
		% Dem.	% Rep.	% Dem.	% Rep.
2020	Pres.	47.53	51.56	61.94	37.28
2020	U.S. Senate	50.23	49.77	64.19	35.81
2018	Gov.	47.77	52.23	63.89	36.11
2018	A.G.	50.97	49.03	64.34	35.66

M16

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

MARCUS CASTER, et al.,
Plaintiffs,

vs.

No. 2:21-cv-01536-AMM

WES ALLEN, et al.,
Defendants.

EVAN MILLIGAN, et al.,
Plaintiffs,

vs.

NO 2:21-cv-01530-AMM

WES ALLEN, et al.,
Defendants.

**DEFENDANT SEN. STEVE LIVINGSTON'S RESPONSE TO
PLAINTIFFS' THIRD SET OF INTERROGATORIES**

Comes now defendant Sen. Steve Livingston and says as follows in response to the *Caster* and *Milligan* plaintiffs' third set of interrogatories:

General Objections

1. Sen. Livingston objects to the interrogatories, including the instructions and definitions, to the extent they purport to impose upon him obligations different from, or greater than, those established or required by the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Northern District of Alabama, or orders of this Court.
2. Sen. Livingston objects to the interrogatories, including the instructions and definitions, to the extent they seek to impose any meaning or interpretation and definitions, to the extent they seek to

impose any meaning or interpretation onto the requests other than that evident from the plain and ordinary meaning of the word used therein.

3. Sen. Livingston objects to the interrogatories to the extent they seek information or documents protected by the attorney-client privilege, the work-product doctrine, the joint-defense or common-interest privilege, or any other applicable privilege, exemption, or immunity.
4. Sen. Livingston objects to the interrogatories to the extent they seek to discover the mental impressions, conclusions, opinions, legal strategies, or legal theories of attorneys for or his non-attorney employees working under their supervision. Such information is privileged as attorney work-product. See *Hickman v. Taylor*, 329 U.S. 495 (1947).
5. Sen. Livingston objects to the interrogatories to the extent they seek information already in the possession, custody, or control of the Plaintiffs, or otherwise equally available to the Plaintiffs.
6. Sen. Livingston objects to the interrogatories to the extent they seek information that is not relevant to any claim or defense presently before the Court and thus are not reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)
7. By answering or otherwise responding to these discovery requests, Rep. Pringle or Sen. Livingston do not concede the relevance or materiality of the information requested or the subject matter to which the request for production refers. Rather, the responses are made expressly subject to, and without in any way waiving or intending to waive, any question or objection as to the competency, relevance, privilege, or admissibility as evidence, of any of the matters referred to in the responses.
8. This production is being made to the *Milligan* and *Caster* Plaintiffs.

Reservation of Rights

Sen. Livingston's responses to these interrogatories are subject to the foregoing general objections and without waiving or intending to waive, but, on the contrary, intending to preserve an preserving:

1. All questions as to the competency, relevance, materiality, privilege, and admissibility of any response, evidence, information, or document for any purpose at any hearing in this matter or any other proceedings;
2. The right to object on any grounds to the use of information provided in any hearing in this matter or in any other proceeding;
3. The right to object on any grounds at any tune to other discovery requests or other discovery, including but not limited to demands for further responses to the interrogatories; and,
4. The right to revise, correct, supplement, clarify, and amend the responses set forth herein consistent with the Federal Rules of Civil Procedure.

INTERROGATORY NO. 1: Identify each individual and/or entity—including but not limited to other state legislators or their staffs, members of Congress or their staffs, consultants, attorneys, experts, political party entities or officials (including from the Alabama Republican Party), and/or interest group agents or employees (including anyone associated with the National Republican Redistricting Trust)—who drew any portion of each of the Legislative Remedial Plans.

RESPONSE:

Sen. Livingston objects that the phrase “were considered” is too vague to allow him to know who the subject is. Sen. Livingston understands the phrase “drew any portion of” to mean the primary author or authors of a plan. With that understating:

1. Community of Interest Plan--Randy Hinaman
2. Opportunity Plan—Sen. Dan Roberts emailed it in.
3. Livingston 2 Plan—This plan was drafted by Sen. Dan Roberts and Sen. Will Barfoot.
4. SB5 Plan— I do not know who drafts this plan; it was delivered to the Reapportionment office by Sen. Arthur Orr.

INTERROGATORY NO. 2: Identify each individual and/or entity—including but not limited to other state legislators or their staffs, members of Congress or their staffs, consultants, attorneys, experts, political party entities or officials (including from the Alabama Republican Party), and/or interest group agents or employees (including anyone associated with the National Republican Redistricting Trust)—whose input, feedback, or advice were considered in drawing, evaluating, or approving the Legislative Remedial Plans.

RESPONSE:

Sen. Livingston objects that the phrase “were considered” is too vague to allow him to know who the subject is, *i.e.*, who is doing the considering. Without knowing that, he cannot say who considered input, feedback, or advice, or how any such consideration by that person, or those persons, was applied when drawing, evaluating, or approving any plan. Subject to and without waiving this objection, Sen. Livingston identifies the following persons whom he believes played some role in the drawing, evaluating, or approving of each plan:

1. Community of Interest Plan—Eddie LaCour, Randy Hinaman, Dr. Trey Hood, Sen. Steve Livingston, Rep. Chris Pringle, and Dorman Walker.¹
2. Opportunity Plan—I do not recall where this plan came from—it may have come from Sen. Dan Roberts. Some members of the Redistricting Committee may have provided input, feedback, or guidance, but I do not recall which ones.
3. Livingston 2 Plan—Members of the Redistricting Committee including Sen. Will Barfoot, Sen. Lance Bell, Sen. Donnie Chesteen, Sen. Steve Livingston, Sen. Arthur Orr, Sen. Dan Roberts, Sen. Clay Scofield, and Sen. Jack Williams.
4. SB5 Plan—Members of the Redistricting Committee including Sen. Will Barfoot, Sen. Lance Bell, Sen. Donnie Chesteen, Sen. Steve Livingston, Sen. Arthur Orr, Sen. Dan Roberts, Sen. Clay Scofield, and Sen. Jack Williams.

¹ Each plan that was considered by a committee or chamber of the Legislature presumably would have been subject to the input, feedback, or advice of its members to the extent they participated in drawing, evaluating, or approving the plan.

INTERROGATORY NO. 3: Describe the role played with respect to the Legislative Remedial Plans by each individual and/or entity identified in Interrogatory Nos. 1 and 2.

RESPONSE:

1. Community of Interest Plan—Randy Hinaman was the primary author, Dr. Trey Hood provided a performance report, Eddie LaCour provided legal advice, Sen. Steve Livingston reviewed and approved the plan, Rep. Chris Pringle reviewed and approved the plan, and Dorman Walker provided legal advice.²
2. Opportunity Plan—Chris Brown authored the plan and Sen. Dan Roberts delivered it to the Reapportionment Office.
3. Livingston 2 Plan— Sen. Will Barfoot, Sen. Lance Bell, Sen. Donnie Chesteen, Sen. Steve Livingston, Sen. Arthur Orr, Sen. Dan Roberts, Sen. Clay Scofield, and Sen. Jack Williams all contributed input to the plan’s design.
4. SB5 Plan— Sen. Will Barfoot, Sen. Lance Bell, Sen. Donnie Chesteen, Sen. Steve Livingston, Sen. Arthur Orr, Sen. Dan Roberts, Sen. Clay Scofield, and Sen. Jack Williams all contributed input to the plan’s design.

INTERROGATORY NO. 4: Identify and describe any and all instructions provided to individuals or entities who drafted or were in any way involved in the drafting of each of the Legislative Remedial Plans, including who drafted, provided, and/or conveyed those instructions.

RESPONSE:

Objection to “any and all” and “in any way” as overbroad and literally impossible to comply with. Subject to and without waiving this objection:

1. Community of Interest Plan—I do not recall, other than the Guidelines. This plan was in large part drawn before I saw it.
2. Opportunity Plan— I do not know.
3. Livingston 2 Plan—I do not recall, other than the Guidelines, and in particular making districts compact and respecting communities of interest.

² Each plan that was considered by a committee or chamber of the Legislature presumably would have been evaluated or approved by the leadership and members of the committee or chamber.

4. SB5 Plan—I do not recall, other than the Guidelines, and in particular making districts compact and respecting communities of interest.

INTERROGATORY NO. 5: Identify and describe any and all criteria, constraints, and considerations that were considered, adopted, or otherwise reflected in the creation of any of the Legislative Remedial Plans, and describe how these criteria, constraints, and considerations were prioritized.

RESPONSE:

1. Community of Interest Plan—See the response to Interrogatory 4.
2. Opportunity Plan— I do not know.
3. Livingston 2 Plan—There were conversations about the plan as it evolved, but I do not recall exactly what was said.
4. SB5 Plan— There were conversations about the plan as it evolved, but I do not recall exactly what was said.

INTERROGATORY NO. 6: Identify each individual and/or entity who participated in the drafting of the statement of legislative intent accompanying the congressional districting map enacted and signed by the Governor as SB 5.

RESPONSE:

On information and belief, Eddie LaCour.

INTERROGATORY NO. 7: Identify all memoranda, reports, analyses, evaluations, or other documents, relied upon in evaluating the Legislative Remedial Plans and the VRA Plaintiffs’ Remedial Plan considered by Joint Legislative Reapportionment Committee, including but not limited to the extent to which the plans provide Black voters the opportunity to elect their preferred candidates, and any performance, functionality, or racially polarized voting analysis.

RESPONSE:

Objection to the phrase “relied on” and other documents” as too vague and general to allow me to know how to reasonably respond. Objection to the extent the phrase “considered by the Joint Legislative Reapportionment Committee” requires a response for members of the Committee other than myself; I do not know what information other members of the Committee had at their disposal and what use they made of it. Subject to and without waiving these objections:

1. Community of Interest Plan—I considered the map, the related population report, and the performance report from Dr. Trey Hood.
2. Opportunity Plan—I considered the map, related population data, and the performance report for Dr. Hood.
3. Livingston 2 Plan—I considered the map and related population data.
4. SB5 Plan—I considered the map, the related population report, and the performance report of Dr. Hood.
5. VRA Plaintiffs' Remedial Plan—I considered the map, the related population data, the letters received from the VRA Plaintiffs' counsel, and comments received at the meetings of the Reapportionment Committee and at the public hearing.

VERIFICATION

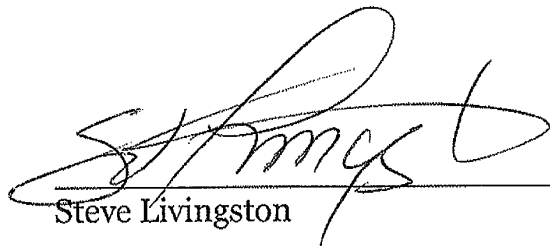
STATE OF ALABAMA)

COUNTY _____)

I, **Steve Livingston**, verify that I have reviewed the foregoing responses to interrogatories and know the contents thereof; that these responses were prepared with the assistance and advice of counsel; that the responses set forth herein, subject to inadvertent or undiscovered errors, are based on and therefore necessarily are limited by the records and information still in existence, presently recollected and thus far discovered in the course of preparation of these responses; that consequently, I reserve the right to make any changes in the responses if it appears at any time that omissions or errors have been made therein or that more accurate information is available; and that subject to the limitations set forth herein, the said answers are true to the best of my knowledge, information and belief.

Sworn to and subscribed before me on this the ___ day of August,

2023.



Steve Livingston

Notary Public

My Commission Expires: _____

Respectfully submitted this this 9th day of August, 2023.

s/ Dorman Walker

Dorman Walker (ASB-9154-R81J)
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***Counsel for Sen. Livingston and
Rep. Pringle***

CERTIFICATE OF SERVICE

I certify that on August 9th, 2023, I served the foregoing on all counsel of record by email.

/s/Dorman Walker

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

MARCUS CASTER, et al.,
Plaintiffs,

vs. No. 2:21-cv-01536-AMM

WES ALLEN, et al.,
Defendants.

EVAN MILLIGAN, et al.,
Plaintiffs,

vs. NO 2:21-cv-01530-AMM

WES ALLEN, et al.,
Defendants.

**DEFENDANT REP. CHRIS PRINGLE'S RESPONSE TO
PLAINTIFFS' THIRD SET OF INTERROGATORIES**

Comes now defendant Rep. Chris Pringle and says as follows in response to the *Caster* and *Milligan* plaintiffs' third set of interrogatories:

General Objections

1. Rep. Pringle objects to the interrogatories, including the instructions and definitions, to the extent they purport to impose upon him obligations different from, or greater than, those established or required by the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Northern District of Alabama, or orders of this Court.
2. Rep. Pringle objects to the interrogatories, including the instructions and definitions, to the extent they seek to impose any meaning or interpretation and definitions, to the extent they seek to impose any meaning or interpretation onto the requests other than that evident from the plain and ordinary meaning of the word used therein.
3. Rep. Pringle objects to the interrogatories to the extent they seek information or documents protected by the attorney-client privilege, the work-product doctrine, the joint-defense or common-interest privilege, or any other applicable privilege, exemption, or immunity.
4. Rep. Pringle objects to the interrogatories to the extent they seek to discover the mental impressions, conclusions, opinions, legal strategies, or legal theories of attorneys for or his non-attorney employees working under their supervision. Such information is privileged as attorney work-product. See *Hickman v. Taylor*, 329 U.S. 495 (1947).
5. Rep. Pringle objects to the interrogatories to the extent they seek information already in the possession, custody, or control of the Plaintiffs, or otherwise equally available to the Plaintiffs.

6. Rep. Pringle objects to the interrogatories to the extent they seek information that is not relevant to any claim or defense presently before the Court and thus are not reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b).
7. By answering or otherwise responding to these discovery requests, Rep. Pringle does not concede the relevance or materiality of the information requested or the subject matter to which the request for production refers. Rather, the responses are made expressly subject to, and without in any way waiving or intending to waive, any question or objection as to the competency, relevance, privilege, or admissibility as evidence, of any of the matters referred to in the responses.
8. This production is being made to the *Milligan* and *Caster* Plaintiffs.

Reservation of Rights

Rep. Pringle's responses to these interrogatories are subject the foregoing general objections and without waiving or intending to waive, but, on the contrary, intending to preserve and preserving:

9. All questions as to the competency, relevance, materiality, privilege, and admissibility of any response, evidence, information, or document for any purpose at any hearing in this matter or any other proceedings;
10. The right to object on any grounds to the use of information provided in any hearing in this matter or in any other proceeding;
11. The right to object on any grounds at any time to other discovery requests or other discovery, including but not limited to demands for further responses to the interrogatories; and,
12. The right to revise, correct, supplement, clarify, and amend the responses set forth herein consistent with the Federal Rules of Civil Procedure.

INTERROGATORY NO. 1: Identify each individual and/or entity—including but not limited to other state legislators or their staffs, members of Congress or their staffs, consultants, attorneys, experts, political party entities or officials (including from the Alabama Republican Party), and/or interest group agents or employees (including anyone associated with the National Republican Redistricting Trust)—who drew any portion of each of the Legislative Remedial Plans.

RESPONSE:

Rep. Pringle objects that the phrase “were considered” is too vague to allow him to know who the subject is. Rep. Pringle understands the phrase “drew any portion of” to mean the primary author or authors of a plan. With that understating:

1. Community of Interest Plan-Randy Hinaman.
2. Opportunity Plan—On information and belief, Chris Brown.
3. Livingston 2 Plan—On information and belief, Sen. Steve Livingston and Sen. Arthur Orr.

4. SB5 Plan—On information and belief, Sen. Steve Livingston and Sen. Arthur Orr.

INTERROGATORY NO. 2: Identify each individual and/or entity—including but not limited to other state legislators or their staffs, members of Congress or their staffs, consultants, attorneys, experts, political party entities or officials (including from the Alabama Republican Party), and/or interest group agents or employees (including anyone associated with the National Republican Redistricting Trust)—whose input, feedback, or advice were considered in drawing, evaluating, or approving the Legislative Remedial Plans.

RESPONSE:

Rep. Pringle objects that the phrase “were considered” is too vague to allow him to know who the subject is, *i.e.*, who is doing the considering. Without knowing that, he cannot say who considered input, feedback, or advice, or how any such consideration by that person, or those persons, was applied when drawing, evaluating, or approving any plan. Subject to and without waiving this objection, Rep. Pringle identifies the following persons whom he believes played some role in the drawing, evaluating, or approving of each plan:

1. Community of Interest Plan—Rep. Robert Aderholt, Rep. Jerry Carl, Randy Hinaman, Dr. Trey Hood, Eddie LaCour, Sen. Steve Livingston, Members of the Public who spoke at the hearings, Rep. Chris Pringle, Reapportionment Committee members, Sen. Greg Reed, Rep. Mike Rogers, and Rep. Terri Sewell, and Dorman Walker.

2. Opportunity Plan—On information and belief, Chris Brown, Eddie LaCour, Sen. Steve Livingston, Members of the Public who spoke at the hearings, Sen. Dan Roberts, Sen. Arthur Orr, Dorman Walker.

3. Livingston 2 Plan—On information and belief, Sen. Steve Livingston, Sen. Arthur Orr, and Eddie LaCour.

4. SB5 Plan— On information and belief, Sen. Steve Livingston, Sen. Arthur Orr, and Eddie LaCour.

INTERROGATORY NO. 3: Describe the role played with respect to the Legislative Remedial Plans by each individual and/or entity identified in Interrogatory Nos. 1 and 2.

RESPONSE:

1. Community of Interest Plan— Rep. Robert Aderholt provided comments on the plan, Rep. Jerry Carl provided comments on the plan, Randy Hinaman was the primary author, Dr. Trey Hood provided a performance report, Eddie LaCour provided legal advice, Sen. Steve Livingston reviewed and approved the plan, Members of the Public who spoke at the hearings, Rep. Chris Pringle reviewed and approved the plan, Reapportionment Committee members, Rep. Mike Rogers provided comments on the plan, Rep. Terri Sewell provided comments on the plan, and Dorman Walker provided legal advice.

2. Opportunity Plan— On information and belief, Chris Brown authored the plan, Eddie LaCour provided legal advice, Sen. Steve Livingston reviewed the plan, Sen. Dan Roberts brought the plan to the Reapportionment Office.

3. Livingston 2 Plan—On information and belief, Sen. Steve Livingston and Sen. Arthur participated in drawing the plan, and Eddie LaCour provided legal advice.

4. SB5 Plan— On information and belief, Sen. Steve Livingston and Sen. Arthur Orr participated in drawing the plan, and Eddie LaCour provided legal advice.

INTERROGATORY NO. 4: Identify and describe any and all instructions provided to individuals or entities who drafted or were in any way involved in the drafting of each of the Legislative Remedial Plans, including who drafted, provided, and/or conveyed those instructions.

RESPONSE:

Objection to “any and all” and “in any way” as overbroad and literally impossible to comply with. Subject to and without waiving this objection:

1. Community of Interest Plan—Mr. Hinaman was instructed by me to follow the Guidelines and the ruling in *Milligan v. Allan*. He was given instruction to consider the Black Belt, Gulf, and Wire Grass communities of interest and to minimize county splits.
2. Opportunity Plan— I do not know.
3. Livingston 2 Plan—I do not know.
4. SB5 Plan—I do not know.

INTERROGATORY NO. 5: Identify and describe any and all criteria, constraints, and considerations that were considered, adopted, or otherwise reflected in the creation of any of the Legislative Remedial Plans, and describe how these criteria, constraints, and considerations were prioritized.

RESPONSE:

1. Community of Interest Plan—See the response to Interrogatory 4; in addition, on information and belief, Mr. Hinaman considered comments he received from member of Congress.
2. Opportunity Plan— I do not know.
3. Livingston 2 Plan—I do not know.
4. SB5 Plan—I do not know.

INTERROGATORY NO. 6: Identify each individual and/or entity who participated in the drafting of the statement of legislative intent accompanying the congressional districting map enacted and signed by the Governor as SB 5.

RESPONSE:

I do not know.

INTERROGATORY NO. 7: Identify all memoranda, reports, analyses, evaluations, or other documents, relied upon in evaluating the Legislative Remedial Plans and the VRA Plaintiffs’ Remedial Plan considered by Joint Legislative Reapportionment Committee, including but not limited to the extent to which the plans provide Black voters the opportunity to elect their preferred candidates, and any performance, functionality, or racially polarized voting analysis.

RESPONSE:

Objection to the phrase “relied on” and other documents” as too vague and general to allow me to know how to reasonably respond. Objection to the

extent the phrase “considered by the Joint Legislative Reapportionment Committee” requires a response for members of the Committee other than myself; but I do not know what information other members of the Committee had at their disposal and what use they made of it. Subject to and without waiving these objections:

1. Community of Interest Plan— I considered the map, the related population report, the performance report from Dr. Trey Hood, the Guidelines, the *Milligan v. Allen* decision, and comment made by persons who saw the plan
2. Opportunity Plan—I considered the map and the related population data.
3. Livingston 2 Plan—I considered the map, related population data, and the performance report for Dr. Hood.
4. SB5 Plan—I considered the map, the related population report, and the performance report of Dr. Hood.
5. VRA Plaintiffs’ Remedial Plan—I considered the map, the related population data, the letters received from the VRA Plaintiffs’ counsel, and comments received at the meetings of the Reapportionment Committee and at the public hearing, and the report for Dr. Hood.

VERIFICATION

STATE OF ALABAMA)

COUNTY *Montgomery*)

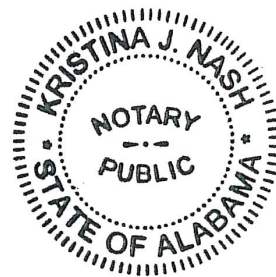
I, **Chris Pringle**, verify that I have reviewed the foregoing responses to interrogatories and know the contents thereof; that these responses were prepared with the assistance and advice of counsel; that the responses set forth herein, subject to inadvertent or undiscovered errors, are based on and therefore necessarily are limited by the records and information still in existence, presently recollectd and thus far discovered in the course of preparation of these responses; that consequently, I reserve the right to make any changes in the responses if it appears at any time that omissions or errors have been made therein or that more accurate information is available; and that subject to the limitations set forth herein, the said answers are true to the best of my knowledge, information and belief.

Sworn to and subscribed before me on this the 9 day of August, 2023.

Chris Pringle
CHRIS PRINGLE

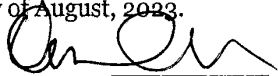
Notary Public *Kristina J. Nash*

My Commission Expires: *8/17/2025*



Respectfully submitted this this 9th day of August, 2023.

s/



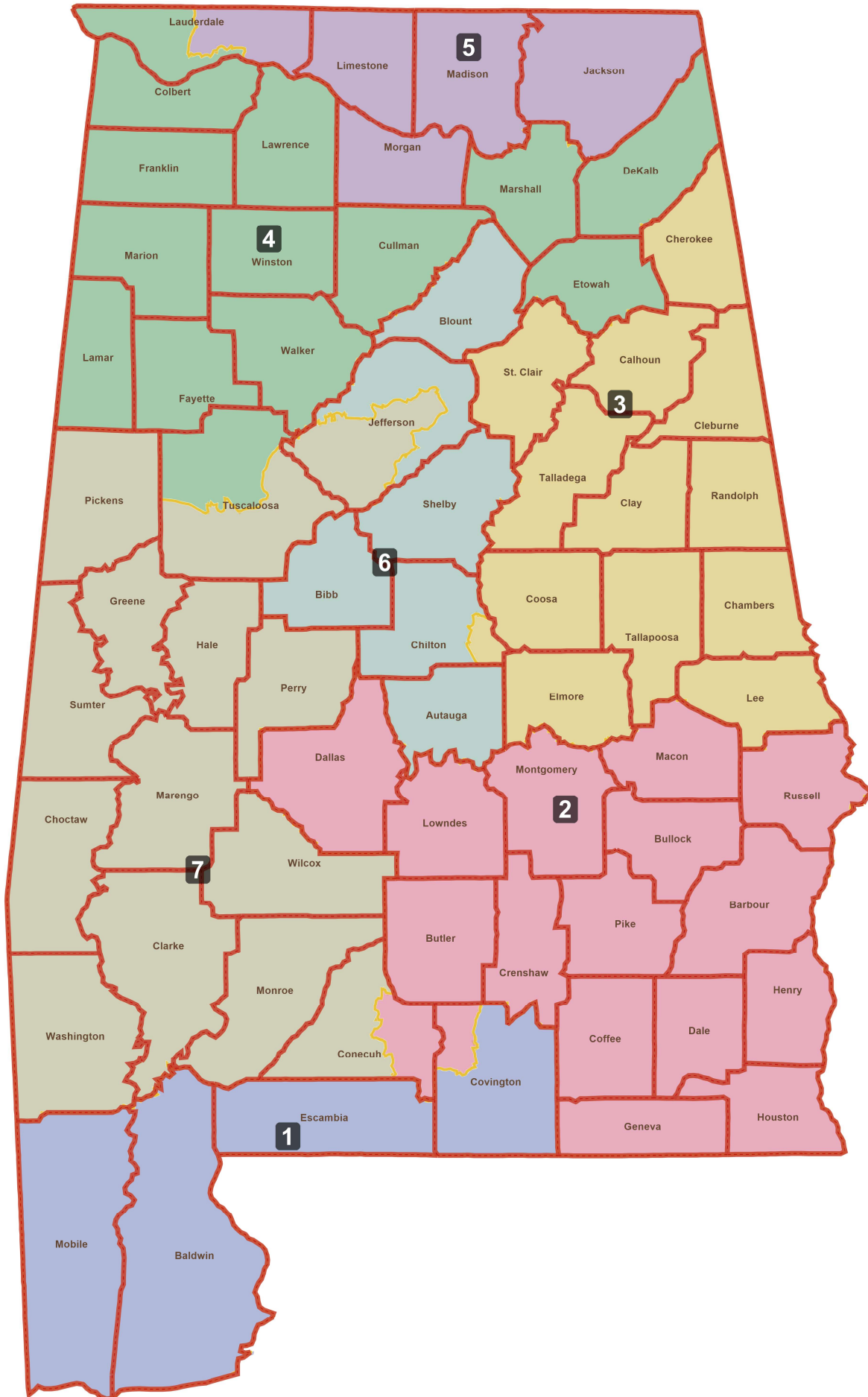
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CERTIFICATE OF SERVICE

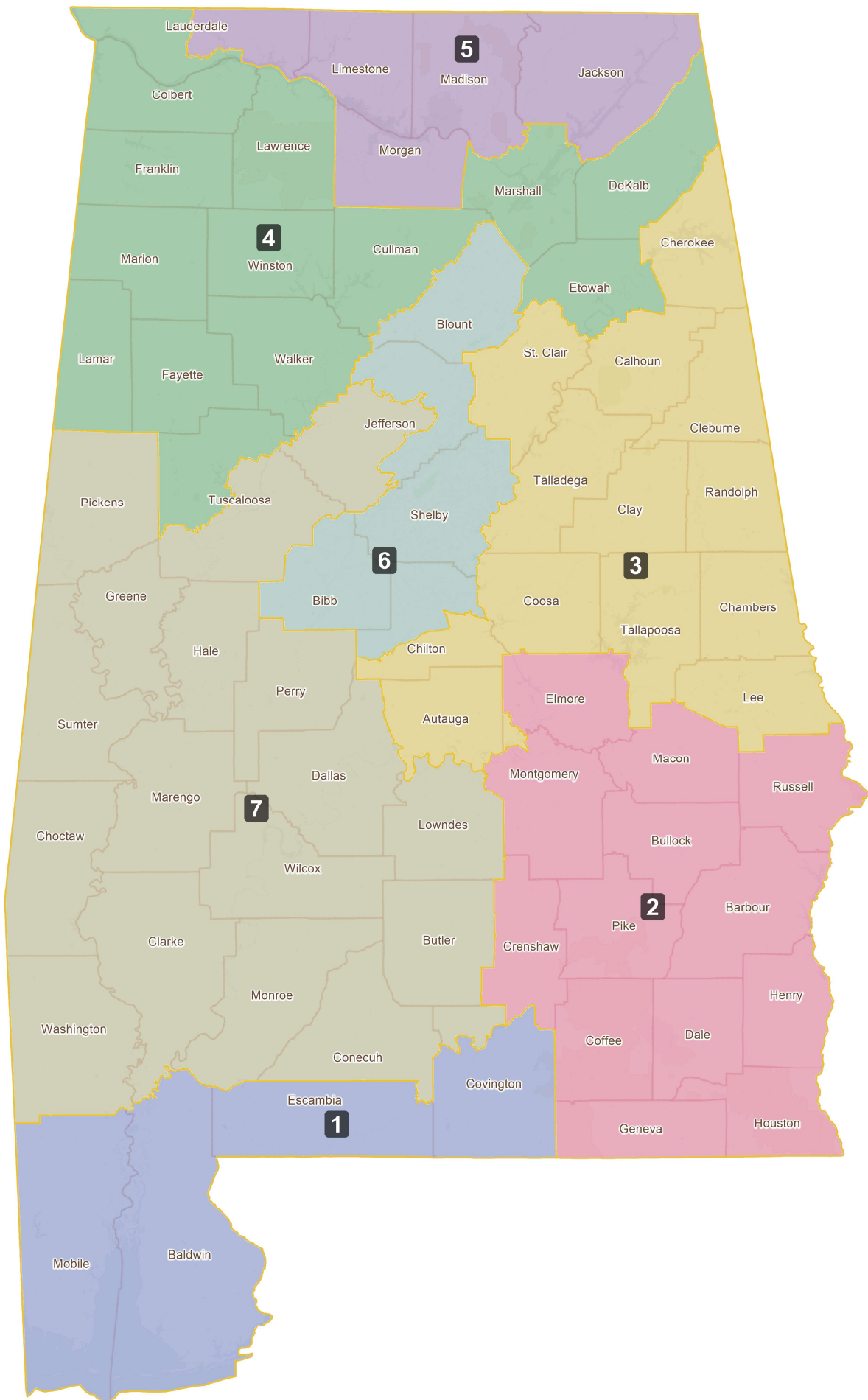
I certify that on August 9th, 2023, I served the foregoing on all counsel of record by email.

/s/Dorman Walker

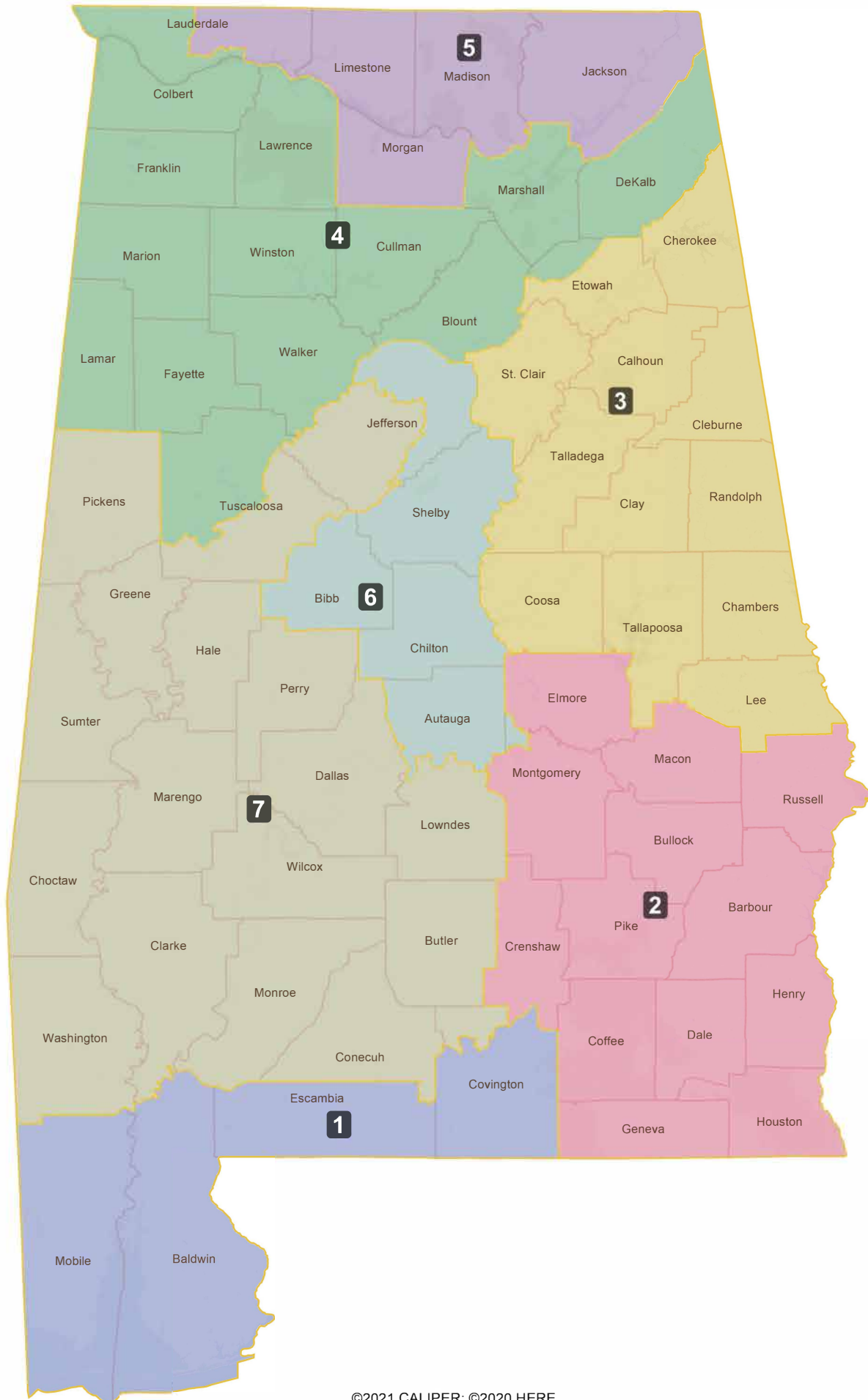
Community of Interest Plan



Opportunity



[Livingston Congressional Plan 2-2023]



User:

Plan Name: **Community of Interest**Plan Type: **congress**

Population Summary

Thursday, July 13, 2023

7:17 PM

District	Population	Deviation	% Devn.	[% White]	[% Black]	[% AP_Wht]	[% AP_Blkl]	[% 18+_Pop]	[% 18+_AP_Blkl]
1	717,754	0	0.00%	65.39%	25.05%	70.33%	26.43%	77.66%	24.6%
2	717,754	0	0.00%	48.51%	42.53%	52.46%	44.24%	77.73%	42.45%
3	717,754	0	0.00%	70.21%	21.28%	74.52%	22.61%	78.73%	21.58%
4	717,754	0	0.00%	81.18%	7.23%	86.36%	8.31%	77.48%	7.7%
5	717,754	0	0.00%	69.62%	17.37%	76.12%	19.06%	78.19%	18.06%
6	717,755	1	0.00%	73.99%	14.98%	79.06%	16.05%	77.03%	14.88%
7	717,754	0	0.00%	39.79%	52.15%	43.05%	53.44%	78.93%	51.55%

Total Population: 5,024,279

Ideal District Population: 717,754

Summary Statistics:

Population Range: 717,754 to 717,755

Ratio Range: 0.00

Absolute Range: 0 to 1

Absolute Overall Range: 1

Relative Range: 0.00% to 0.00%

Relative Overall Range: 0.00%

Absolute Mean Deviation: 0.14

Relative Mean Deviation: 0.00%

Standard Deviation: 0.35

1 REAPPORTIONMENT COMMITTEE REDISTRICTING GUIDELINES

2 May 5, 2021

3 I. POPULATION

4 The total Alabama state population, and the population of defined subunits
5 thereof, as reported by the 2020 Census, shall be the permissible data base used
6 for the development, evaluation, and analysis of proposed redistricting plans. It is
7 the intention of this provision to exclude from use any census data, for the purpose
8 of determining compliance with the one person, one vote requirement, other than
9 that provided by the United States Census Bureau.

10 II. CRITERIA FOR REDISTRICTING

11 a. Districts shall comply with the United States Constitution, including the
12 requirement that they equalize total population.

13 b. Congressional districts shall have minimal population deviation.

14 c. Legislative and state board of education districts shall be drawn to achieve
15 substantial equality of population among the districts and shall not exceed an
16 overall population deviation range of $\pm 5\%$.

17 d. A redistricting plan considered by the Reapportionment Committee shall
18 comply with the one person, one vote principle of the Equal Protection Clause of
19 the 14th Amendment of the United States Constitution.

20 e. The Reapportionment Committee shall not approve a redistricting plan that
21 does not comply with these population requirements.

22 f. Districts shall be drawn in compliance with the Voting Rights Act of 1965, as
23 amended. A redistricting plan shall have neither the purpose nor the effect of
24 diluting minority voting strength, and shall comply with Section 2 of the Voting
25 Rights Act and the United States Constitution.

26 g. No district will be drawn in a manner that subordinates race-neutral
27 districting criteria to considerations of race, color, or membership in a language-
28 minority group, except that race, color, or membership in a language-minority
29 group may predominate over race-neutral districting criteria to comply with
30 Section 2 of the Voting Rights Act, provided there is a strong basis in evidence in
31 support of such a race-based choice. A strong basis in evidence exists when there
32 is good reason to believe that race must be used in order to satisfy the Voting Rights
33 Act.

1 h. Districts will be composed of contiguous and reasonably compact
2 geography.

3 i. The following requirements of the Alabama Constitution shall be complied
4 with:

5 (i) Sovereignty resides in the people of Alabama, and all districts should be
6 drawn to reflect the democratic will of all the people concerning how their
7 governments should be restructured.

8 (ii) Districts shall be drawn on the basis of total population, except that voting
9 age population may be considered, as necessary to comply with Section 2 of the
10 Voting Rights Act or other federal or state law.

11 (iii) The number of Alabama Senate districts is set by statute at 35 and, under
12 the Alabama Constitution, may not exceed 35.

13 (iv) The number of Alabama Senate districts shall be not less than one-fourth or
14 more than one-third of the number of House districts.

15 (v) The number of Alabama House districts is set by statute at 105 and, under
16 the Alabama Constitution, may not exceed 106.

17 (vi) The number of Alabama House districts shall not be less than 67.

18 (vii) All districts will be single-member districts.

19 (viii) Every part of every district shall be contiguous with every other part of the
20 district.

21 j. The following redistricting policies are embedded in the political values,
22 traditions, customs, and usages of the State of Alabama and shall be observed to
23 the extent that they do not violate or subordinate the foregoing policies prescribed
24 by the Constitution and laws of the United States and of the State of Alabama:

25 (i) Contests between incumbents will be avoided whenever possible.

26 (ii) Contiguity by water is allowed, but point-to-point contiguity and long-lasso
27 contiguity is not.

28 (iii) Districts shall respect communities of interest, neighborhoods, and political
29 subdivisions to the extent practicable and in compliance with paragraphs a
30 through i. A community of interest is defined as an area with recognized
31 similarities of interests, including but not limited to ethnic, racial, economic, tribal,
32 social, geographic, or historical identities. The term communities of interest may,
33 in certain circumstances, include political subdivisions such as counties, voting

1 precincts, municipalities, tribal lands and reservations, or school districts. The
2 discernment, weighing, and balancing of the varied factors that contribute to
3 communities of interest is an intensely political process best carried out by elected
4 representatives of the people.

5 (iv) The Legislature shall try to minimize the number of counties in each district.

6 (v) The Legislature shall try to preserve the cores of existing districts.

7 (vi) In establishing legislative districts, the Reapportionment Committee shall
8 give due consideration to all the criteria herein. However, priority is to be given to
9 the compelling State interests requiring equality of population among districts and
10 compliance with the Voting Rights Act of 1965, as amended, should the
11 requirements of those criteria conflict with any other criteria.

12 g. The criteria identified in paragraphs j(i)-(vi) are not listed in order of
13 precedence, and in each instance where they conflict, the Legislature shall at its
14 discretion determine which takes priority.

15 **III. PLANS PRODUCED BY LEGISLATORS**

16 1. The confidentiality of any Legislator developing plans or portions thereof
17 will be respected. The Reapportionment Office staff will not release any
18 information on any Legislator's work without written permission of the Legislator
19 developing the plan, subject to paragraph two below.

20 2. A proposed redistricting plan will become public information upon its
21 introduction as a bill in the legislative process, or upon presentation for
22 consideration by the Reapportionment Committee.

23 3. Access to the Legislative Reapportionment Office Computer System, census
24 population data, and redistricting work maps will be available to all members of
25 the Legislature upon request. Reapportionment Office staff will provide technical
26 assistance to all Legislators who wish to develop proposals.

27 4. In accordance with Rule 23 of the Joint Rules of the Alabama Legislature
28 “[a]ll amendments or revisions to redistricting plans, following introduction as a
29 bill, shall be drafted by the Reapportionment Office.” Amendments or revisions
30 must be part of a whole plan. Partial plans are not allowed.

31 5. In accordance with Rule 24 of the Joint Rules of the Alabama Legislature,
32 “[d]rafts of all redistricting plans which are for introduction at any session of the
33 Legislature, and which are not prepared by the Reapportionment Office, shall be
34 presented to the Reapportionment Office for review of proper form and for entry
35 into the Legislative Data System at least ten (10) days prior to introduction.”

1 **IV. REAPPORTIONMENT COMMITTEE MEETINGS AND PUBLIC**
2 **HEARINGS**

3 1. All meetings of the Reapportionment Committee and its sub-committees
4 will be open to the public and all plans presented at committee meetings will be
5 made available to the public.

6 2. Minutes of all Reapportionment Committee meetings shall be taken and
7 maintained as part of the public record. Copies of all minutes shall be made
8 available to the public.

9 3. Transcripts of any public hearings shall be made and maintained as part of
10 the public record, and shall be available to the public.

11 4. All interested persons are encouraged to appear before the
12 Reapportionment Committee and to give their comments and input regarding
13 legislative redistricting. Reasonable opportunity will be given to such persons,
14 consistent with the criteria herein established, to present plans or amendments
15 redistricting plans to the Reapportionment Committee, if desired, unless such
16 plans or amendments fail to meet the minimal criteria herein established.

17 5. Notice of all Reapportionment Committee meetings will be posted on
18 monitors throughout the Alabama State House, the Reapportionment Committee's
19 website, and on the Secretary of State's website. Individual notice of
20 Reapportionment Committee meetings will be sent by email to any citizen or
21 organization who requests individual notice and provides the necessary
22 information to the Reapportionment Committee staff. Persons or organizations
23 who want to receive this information should contact the Reapportionment Office.

24 **V. PUBLIC ACCESS**

25 1. The Reapportionment Committee seeks active and informed public
26 participation in all activities of the Committee and the widest range of public
27 information and citizen input into its deliberations. Public access to the
28 Reapportionment Office computer system is available every Friday from 8:30 a.m.
29 to 4:30 p.m. Please contact the Reapportionment Office to schedule an
30 appointment.

31 2. A redistricting plan may be presented to the Reapportionment Committee
32 by any individual citizen or organization by written presentation at a public
33 meeting or by submission in writing to the Committee. All plans submitted to the
34 Reapportionment Committee will be made part of the public record and made
35 available in the same manner as other public records of the Committee.

1 3. Any proposed redistricting plan drafted into legislation must be offered by a
2 member of the Legislature for introduction into the legislative process.

3 4. A redistricting plan developed outside the Legislature or a redistricting plan
4 developed without Reapportionment Office assistance which is to be presented for
5 consideration by the Reapportionment Committee must:

6 a. Be clearly depicted on maps which follow 2020 Census geographic
7 boundaries;

8 b. Be accompanied by a statistical sheet listing total population for each district
9 and listing the census geography making up each proposed district;

10 c. Stand as a complete statewide plan for redistricting.

11 d. Comply with the guidelines adopted by the Reapportionment Committee.

12 5. Electronic Submissions

13 a. Electronic submissions of redistricting plans will be accepted by the
14 Reapportionment Committee.

15 b. Plans submitted electronically must also be accompanied by the paper
16 materials referenced in this section.

17 c. See the Appendix for the technical documentation for the electronic
18 submission of redistricting plans.

19 6. Census Data and Redistricting Materials

20 a. Census population data and census maps will be made available through the
21 Reapportionment Office at a cost determined by the Permanent Legislative
22 Committee on Reapportionment.

23 b. Summary population data at the precinct level and a statewide work maps
24 will be made available to the public through the Reapportionment Office at a cost
25 determined by the Permanent Legislative Committee on Reapportionment.

26 c. All such fees shall be deposited in the state treasury to the credit of the
27 general fund and shall be used to cover the expenses of the Legislature.

28 **Appendix.**

29 **ELECTRONIC SUBMISSION OF REDISTRICTING PLANS**

30 **REAPPORTIONMENT COMMITTEE - STATE OF ALABAMA**

1

2 The Legislative Reapportionment Computer System supports the electronic
3 submission of redistricting plans. The electronic submission of these plans must
4 be via email or a flash drive. The software used by the Reapportionment Office is
5 Maptitude.

6 The electronic file should be in DOJ format (Block, district # or district #,
7 Block). This should be a two column, comma delimited file containing the FIPS
8 code for each block, and the district number. Maptitude has an automated plan
9 import that creates a new plan from the block/district assignment list.

10 Web services that can be accessed directly with a URL and ArcView
11 Shapefiles can be viewed as overlays. A new plan would have to be built using this
12 overlay as a guide to assign units into a blank Maptitude plan. In order to analyze
13 the plans with our attribute data, edit, and report on, a new plan will have to be
14 built in Maptitude.

15 In order for plans to be analyzed with our attribute data, to be able to edit,
16 report on, and produce maps in the most efficient, accurate and time saving
17 procedure, electronic submissions are REQUIRED to be in DOJ format.

18 Example: (DOJ FORMAT BLOCK, DISTRICT #)

19 SSCCCTTTTTTBBBBDDDD

20 SS is the 2 digit state FIPS code

21 CCC is the 3 digit county FIPS code

22 TTTTTT is the 6 digit census tract code

23 BBBB is the 4 digit census block code

24 DDDD is the district number, right adjusted

25 **Contact Information:**

26 Legislative Reapportionment Office

27 Room 317, State House

28 11 South Union Street

29 Montgomery, Alabama 36130

30 (334) 261-0706

1 For questions relating to reapportionment and redistricting, please contact:

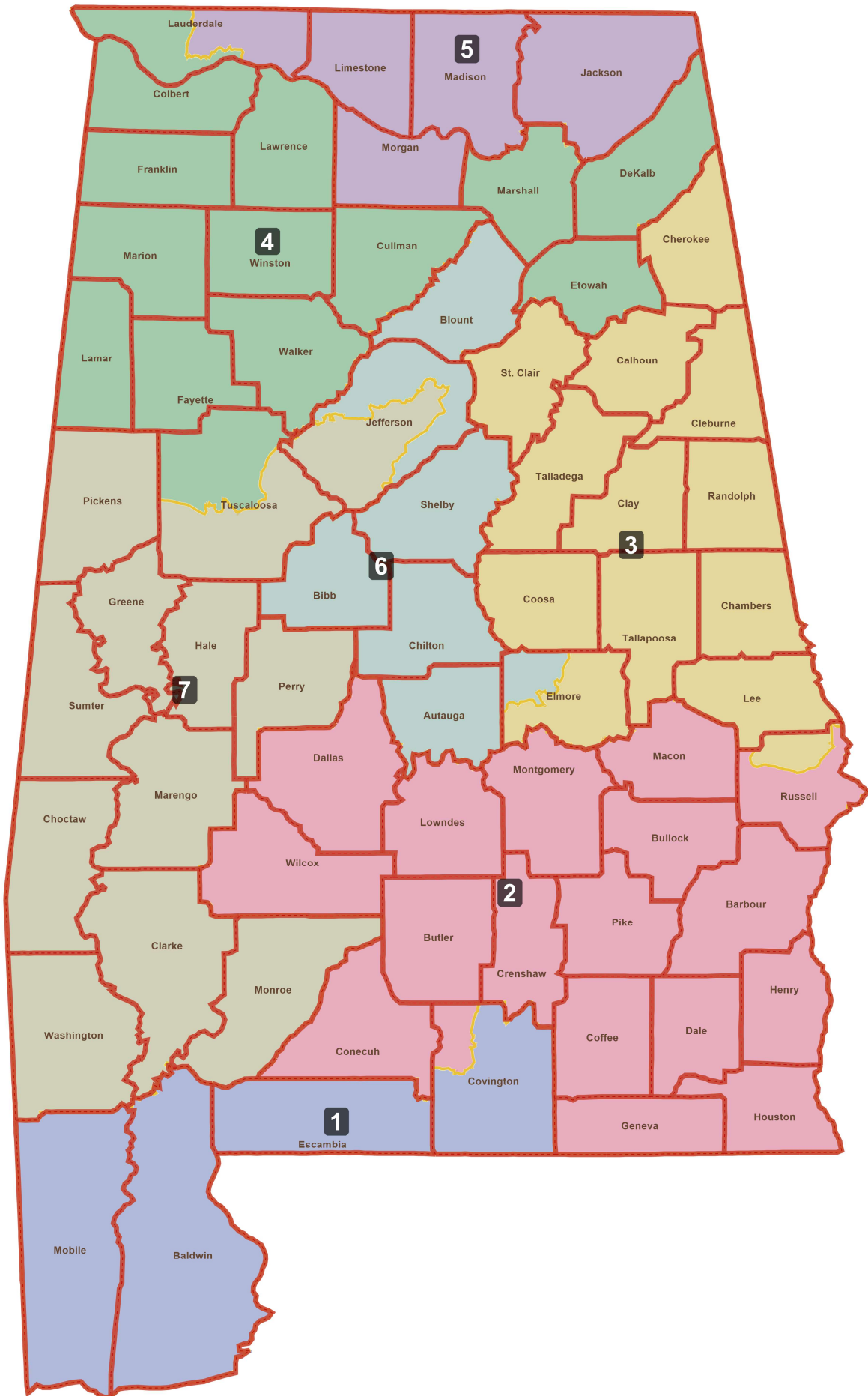
2 Donna Overton Loftin, Supervisor

3 Legislative Reapportionment Office

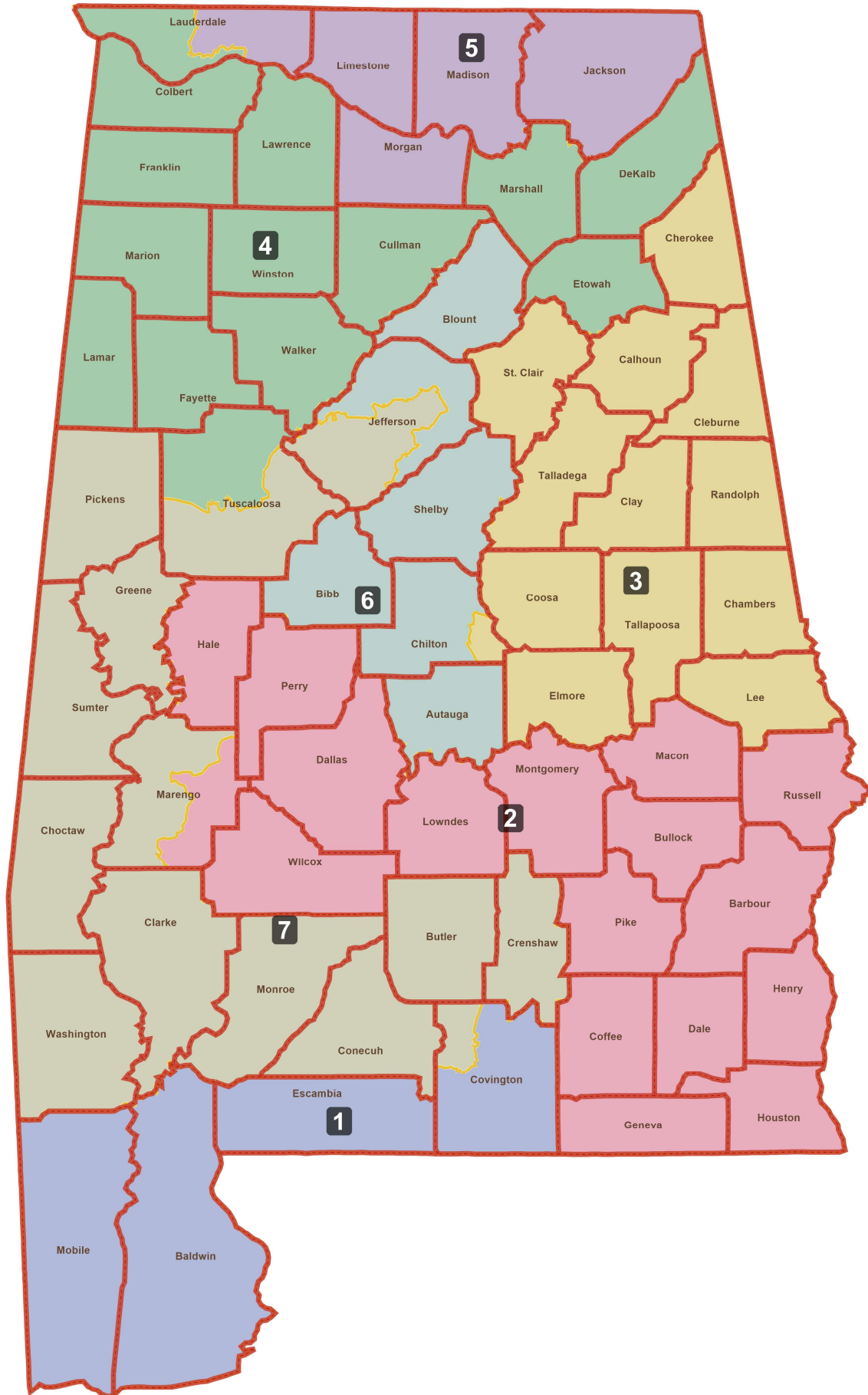
4 donna.overton@alsenate.gov

5 Please Note: The above e-mail address is to be used only for the purposes of
6 obtaining information regarding redistricting. Political messages, including those
7 relative to specific legislation or other political matters, cannot be answered or
8 disseminated via this email to members of the Legislature. Members of the
9 Permanent Legislative Committee on Reapportionment may be contacted through
10 information contained on their Member pages of the Official Website of the
11 Alabama Legislature, legislature.state.al.us/aliswww/default.aspx.

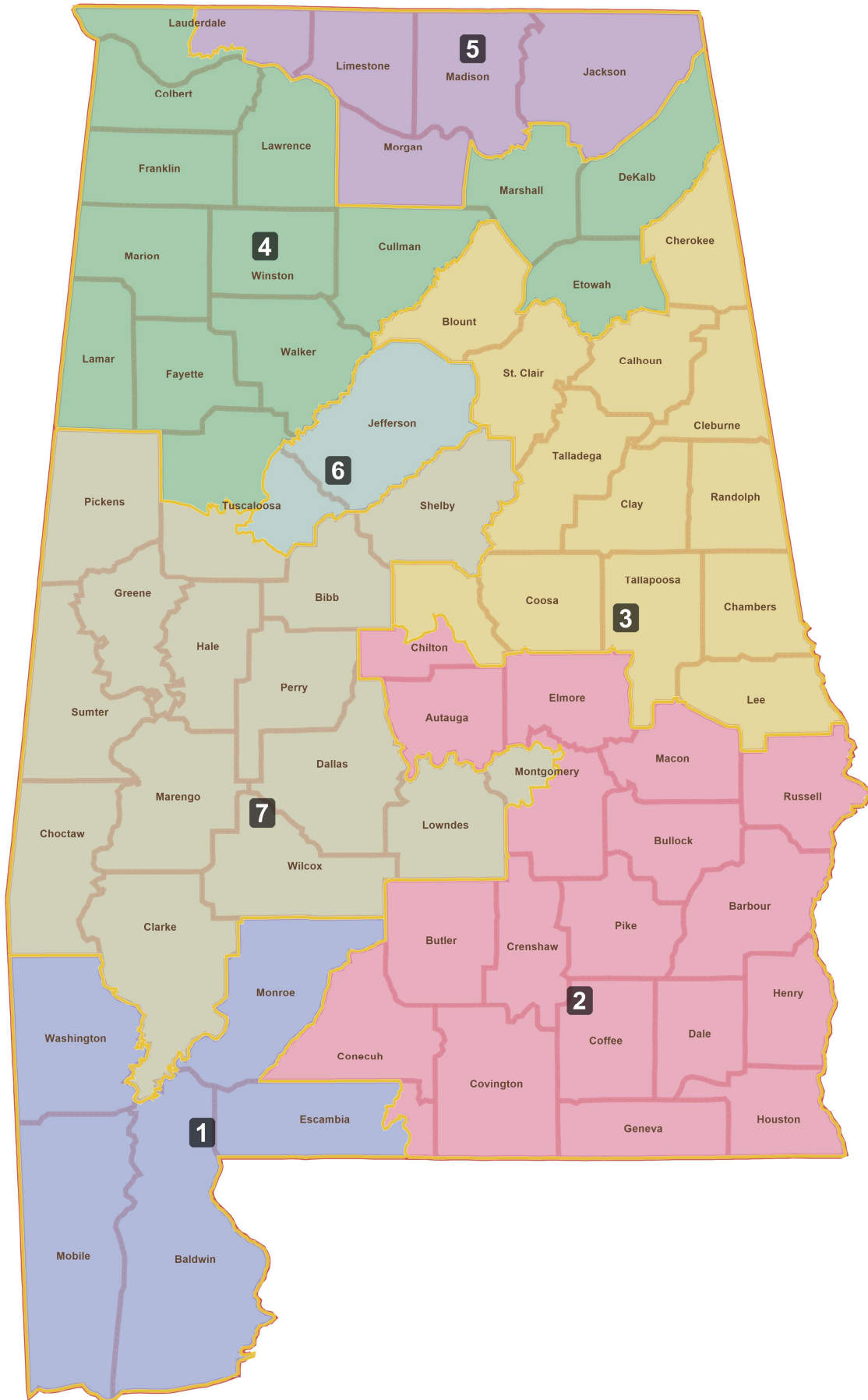
Russell Split Plan



Expanded Black Belt Plan

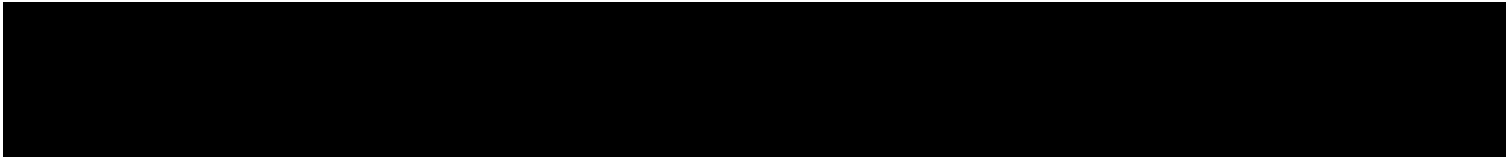


Whole Jefferson County Plan





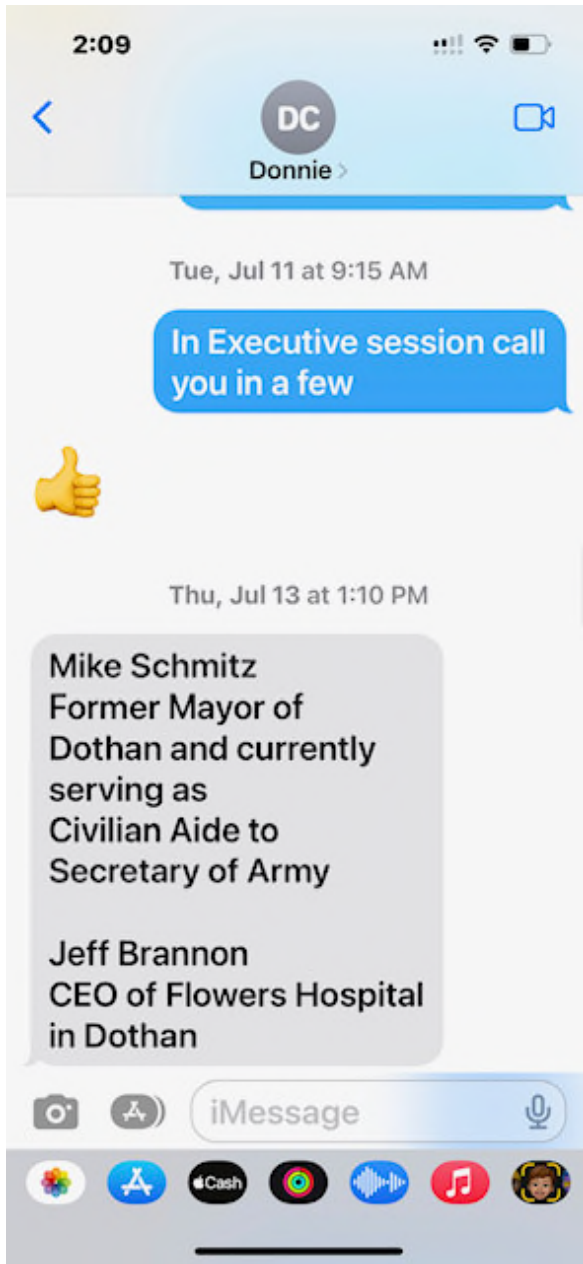
REDACTED



I am sorry for the delay getting this to you, but just got back in state from RNC Meetings. Here is the contact and bio for Dale. The party has retained him for council to us, and all Republican caucus members. He is considered one of the most experienced redistricting attorneys in the country. Please feel free to contact him if he can be useful in any way.

Dale Oldham is currently counsel to Fairlines America & the NRRT and the Redistricting Counsel for the Republican National Committee during the 2000 & 2010 redistricting cycles. Dale was Associate Counsel to the RNC during the 1990 redistricting cycle. Mr. Oldham was Counsel to FEC Commissioner Don McGahn and was the former Counsel for the Congressionally appointed Members of the Census Monitoring Board. He has been involved in nearly all of the critical redistricting cases of the last three redistricting cycles. He also represented the first charter school applicant in South Carolina, as well as other conservative and Republican organizations. Mr. Oldham has spoken at numerous seminars and symposiums on redistricting, census, free speech, campaign finance and election law as well as school choice issues. Including a paper for the ABA which was published in *The Census, the Court, and Redistricting*, in *Census 2000: Considerations and Strategies for State and Local Government* (Benjamin E. Griffith ed., American Bar Association 2000). Mr. Oldham is native South Carolinian and a graduate of the University of South Carolina School of Law.

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Exhibit 11 - Livingston Deposition

RISE TO THE MOMENT OF TRUTH
TUESDAY, AUGUST 1, 2023

News

House, Senate committees narrow redistricting plans down to two

Caleb Taylor | 07.18.23

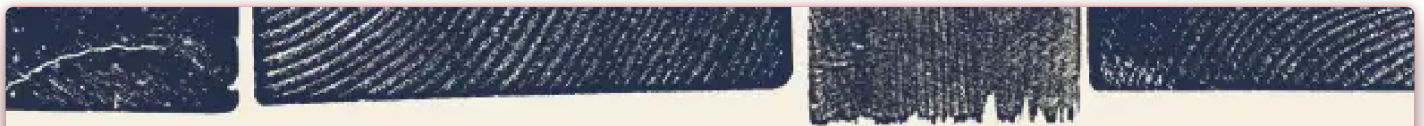


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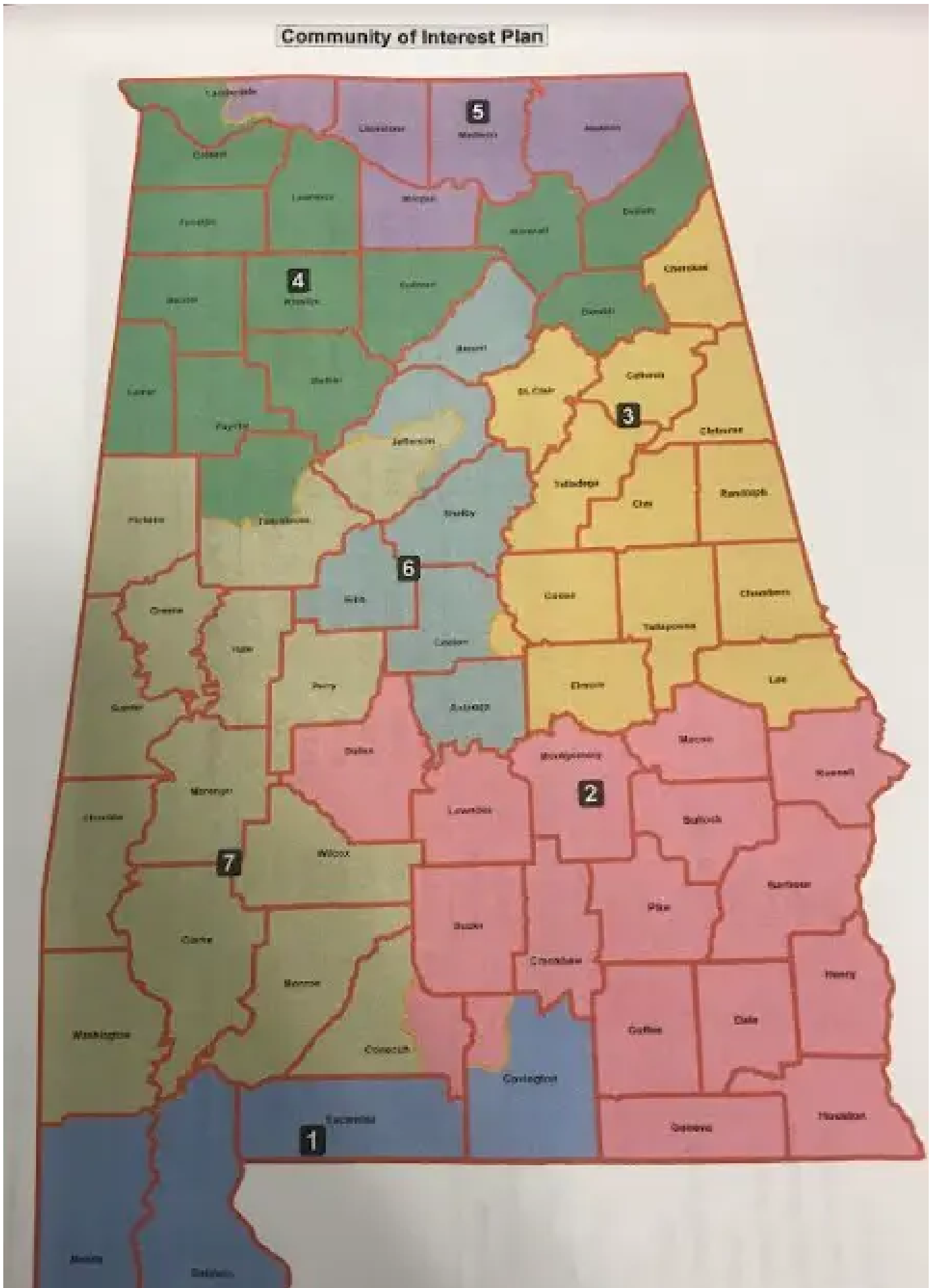
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SIGN UP

MONTGOMERY — Members of House and Senate committees advanced two redistricting maps on Tuesday morning.

Members of the House State Government Committee passed the [Community of Interest Plan](#) by State Rep. Chris Pringle (R-Mobile) that the reapportionment committee passed on Monday.

Community of Interest Plan





The plan keeps all of Mobile and Baldwin Counties in the first congressional district.

Pringle said on Monday the plan increases the second congressional district's black voting age population from 31.86% to 42.45%.

Members of the Senate Confirmations Committee passed an amended version of the Community Interest Plan by State Sen. Steve Livingston (R-Scottsboro) by an 11-5 margin that features a second congressional district with an approximately 38% black voting age population.

Livingston Congressional Plan 2



"This plan is based on neutral principles promoting communities of interest in the gulf, Black Belt, and the Wiregrass ensuring that the state's long-term principles of compact districts is given a fuller and fairer effect," Livingston said at the meeting. "While the plan is not graded based on race, the result is fairly applied with these neutral principles and the (black voting age population) in district two, which was in the existing map was like around 30%, is now 38.8% in this plan. District seven preserves a core which is 50.43% (black voting age population). This plan complies with the Voting Rights Act."

The plan was supported by every Republican on the Senate committee besides State Sen. Andrew Jones (R-Centre).

"I've heard from my locals in Etowah County," Jones said. "I haven't looked at the data, but I imagine for over 50 years or better they've been whole. Not only in this map do they get a new Congressman, that's fine. My district certainly has two congressmen at the moment, but it splits looks to be maybe 10% of the population out of the county which has historically been whole. My folks have been very clear that they want to stick together because they're kind of a regional hub."

Democrats on the committee opposed the plan because they said a 38% black voting-age population in the second congressional district wasn't a high enough percentage to elect a minority congressman.

Multiple other maps filed by Democrats didn't advance in either committee.

The [U.S. Supreme Court](#) upheld with a 5-4 vote in June a lower court's decision to require the Alabama Legislature to redraw their congressional districts passed in 2021 to include a second largely or majority-black congressional district.

Alabama's seventh congressional district is currently the only majority-black congressional district in Alabama. It is held by U.S. Rep. Terri Sewell (D-Birmingham).

To connect with the author of this story or to comment, email caleb.taylor@1819News.com.

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Featured Local Savings



GOVERNMENT & POLITICS

Alabama Legislature passes controversial congressional map

The approved map aims to address court ruling, but leads to tensions and claims of voter suppression

BY: **ALANDER ROCHA AND JEMMA STEPHENSON** - JULY 21, 2023 6:34 PM



📷 A group of House Republicans speak during a special session of the Alabama Legislature on July 21, 2023. Clockwise from left: Rep. Marcus Parramore, R-Troy; Rep. Steve Clouse, R-Geneva; Rep. Paul Lee, R-Dothan; Rep. Chris Pringle, R-Mobile. The fifth person is unknown. (Stew Milne for Alabama Reflector)

The Alabama Legislature Friday afternoon approved a congressional map that would lower the percentage of Alabama’s current majority-Black district and create a district in southeast

Alabama that would be nearly 40% Black.

The proposed map passed the House on a 75-28 vote Friday after it passed the Senate 24-6. Alabama Gov. Kay Ivey signed the maps on Friday evening.

The new maps aim to address a federal court ruling early last year that Alabama's 2021 congressional map violated Section 2 of the Voting Rights Act by packing Black voters in a single district. The court called for the drawing of new maps that would give Black voters a chance to elect their preferred candidates.

But Democrats and Republicans clashed during a weeklong special session over the appropriate remedy. Nearly all Republicans in the Legislature voted for the proposed maps on Friday; all the Democrats present voted against them.



From left, Rep. Chris Pringle, R-Mobile; Rep. Chris Sells, R-Greenville and Sen. Steve Livingston, R-Scottsboro listen during a special session on redistricting on Friday, July 21, 2023 in Montgomery, Alabama. (Stew Milne for Alabama Reflector)

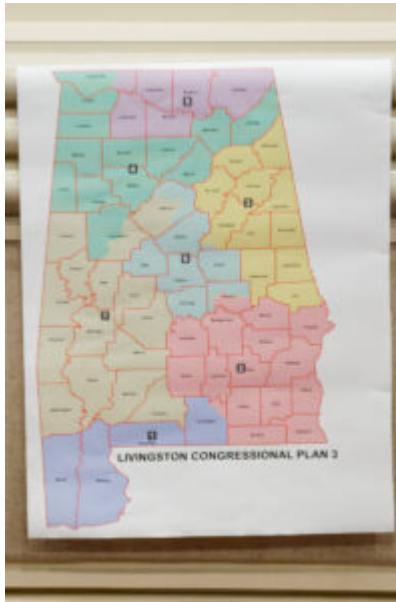
The new map mainly changes the 2nd Congressional District in southeastern Alabama and the 7th Congressional District in western Alabama, currently the state's single majority-Black district.

Under the proposed map, the 2nd Congressional District will have a Black voting age population of 39.93%. The 7th Congressional District will have a Black voting age population of 50.65%, lower than the district's current Black voting age population.

A three-judge panel of the U.S. 11th Circuit Court of Appeals is scheduled to hold a hearing on the map on Aug. 14.

Sen. Steve Livingston, R-Scottsboro, the co-chair of the Permanent Legislative Reapportionment Committee and the sponsor of the map, said Friday that Republicans prioritized compactness and communities of interest, which led to a 40% Black district. Livingston said there was not a conscious attempt to reach that number.

“There are three legs and in the suit, the court’s order and those are two of the three legs,” he said to reporters.



📷 The Livingston Congressional Plan 3 map passed during a special session on redistricting on Friday, July 21, 2023 in Montgomery, Alabama. (Stew Milne for Alabama Reflector)

Democrats said that the map was pushed through without public input. Rep. Chris England, D-Tuscaloosa, said during the vote Friday that that was the first time many were seeing the proposed map, which was the third iteration of the Livingston map, and said it’s “one of the three maps that’s gone through the entire process, that has managed to avoid public scrutiny.”

“You are unfortunately going to be memorialized in history,” England said to Rep. Chris Pringle, R-Mobile, the other reapportionment committee co-chair.

The 40% represented a midway point between a Senate Republican-supported map that would have set the Black population in the 2nd Congressional District at 38%, and a House Republican proposal that would have set it at 42%. Democrats did not support a single plan, but most members wanted a map with two majority-Black districts, which they said would be the only way to satisfy the court.

“It’s like you were told to create an additional opportunity district, but you even lessen the opportunities in the other district, and I guess I don’t quite get that – I don’t quite understand

that – you got all the marbles, and you want even more marbles,” Rep. Prince Chestnut, D-Selma said.

Pringle said that was the best they could do.

“We do the very best we can in the bills we sponsor,” he said. “But oftentimes we have to work with the other body. The other body has as much say in what happens as we do. This is the best map we can negotiate with the other body.”

Redistricting principles

The bill also put redistricting principles into law.

Some require maps have no more than six county line splits, which the bill says is the minimum needed for minimal population deviation. In the map passed, the 2nd Congressional District has a deviation of “1.”

Maps are not to place incumbents in the same district, and they are not to split communities of interest, both of which appeared to be priorities for Republican lawmakers throughout the special session.



Sen. Rodger Smitherman, D-Birmingham, discusses district maps during a special session on redistricting on Friday, July 21, 2023 in Montgomery, Alabama. (Stew Milne for Alabama Reflector)

“I bet you that when the election come if this plan is accepted, that it won’t be a change and nobody in Congress,” Sen. Rodger Smitherman, D-Birmingham, said.

Rep. Sam Jones, D-Mobile, said the Legislature chose to redefine what a community of interest is, because they think they can get away with it.

“But [community of interest] was actually defined by the state and recognize the similarities of interests, including and not limited to, ethnic, racial, economic, tribal, social, geographic or historical identities. That’s what the state of Alabama and the courts have found,” Jones said.



Rep. Sam Jones, D-Mobile, speaks during a special session on redistricting on Friday, July 21, 2023 in Montgomery, Alabama. (Stew Milne for Alabama Reflector)

The principles also include a list of “non-negotiable” provisions, including preserving cores of existing districts; minimizing numbers of counties of each districts; minimizing splits in neighborhoods and political subdivisions; keeping communities of interest together, defined by a list including transportation infrastructure and geographic features but not race; that the weighing of communities of interest is best decided by lawmakers; and it is best to split communities of interest into two rather than three districts.

In the list of “non-negotiable” provisions, the Black Belt, Wiregrass and Gulf Coast were defined as communities of interest. The Supreme Court, in the majority opinion, had included that keeping the Black Belt together took precedence over the Gulf Coast.

Livingston Plan 3 keeps the Gulf Coast together but not the Black Belt. The bill says that the Black Belt cannot be in one county, so the 18 counties should be split into two districts.

Chestnut said the state continues to do things differently from what is expected.

“Throughout history, it’s as if the courts is always the only way that we as Black people are able to get gains in the state of Alabama,” he said.

Approaches



📷 Sen. Merika Coleman, D-Pleasant Grove (left, at podium) speaks in opposition to a Republican-supported congressional map as Senate Republicans (right) huddle in a corner on July 21, 2023 in Montgomery, Alabama. The Alabama Legislature was expected to approve GOP congressional maps, which Democrats say will not satisfy a federal court order. (Brian Lyman/Alabama Reflector)

Alabama was ordered to redraw its congressional districts after the U.S. Supreme Court upheld a lower court ruling in 2022, which found that the state's congressional maps violated the Voting Rights Act. The case, known as *Allen v. Milligan*, was brought by Black plaintiffs who argued that the 2021 adopted map unfairly concentrated Black voters in the 7th Congressional District, making it difficult for them to form alliances with white voters and elect their preferred representatives.

In January 2022, a three-judge panel ruled in favor of the plaintiffs. The judges cited the significant racial polarization in Alabama's voting patterns, with white voters largely supporting Republicans and Black voters tending to favor Democrats. As a remedy, the court ordered the state to create new congressional maps that would, at the very least, provide Black voters with the opportunity to elect two representatives of their choice.

The U.S. Supreme Court [upheld the lower court ruling in June](#). The Legislature had to approve the maps by Friday.

Republicans and Democrats clashed throughout the special session about what remedies would satisfy the court. Pringle and Livingston zeroed in on language in the 2022 ruling that said that a second district would need to give Black voters an “opportunity” to elect their preferred representatives. The legislators argue that a district would not need to have a majority-Black population to achieve that.



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“I know everybody seems to do it differently, but I wish they defined opportunity a lot better,” Livingston said after the Senate approved the proposal. “It would have helped everybody in this decision-making process.”

Democrats said racially-polarized voting in the state meant that a majority-Black district was critical for Black Alabamians to be able to select their preferred candidates. House Democrats [said Wednesday](#) that while a 38 to 42% Black district might be winnable for Democrats in urban counties like Jefferson or Madison, with more racial crossover in voting, it would be impossible in the rural Wiregrass, where they said such crossover voting is almost nonexistent.

The weeklong session drew national attention. Republicans have a slim majority in the U.S. House that could shift with the loss of five seats. Livingston said Friday he had spoken with U.S. House Speaker Kevin McCarthy, R-California.

“He said ‘I’m interested in keeping my majority,’” Livingston said. “That was basically his conversation ... he’s just telling us to do what we can do. We did the best we could.”



Alabama House Speaker Nathaniel Ledbetter, R-Rainsville, gaveling the session back to order during a special session on redistricting on Friday, July 21, 2023 in Montgomery, Alabama. (Stew Milne for Alabama Reflector)

Alabama House Speaker Nathaniel Ledbetter, R-Rainsville, said that the increased minority population in the 2nd Congressional District and efforts to make districts more compact will help the state prevail in court.

“If you think about where we were, the Supreme Court ruling was 5-4. So, there’s just one judge needed to see something different,” Ledbetter said to reporters after the map’s passage.

“And I think the movement that we have and what we’ve come to compromise today is a good shot.”

In a news release from the NAACP Legal Defense Fund, the plaintiffs in the Milligan case said that they are not satisfied with the plan, and said they believe it violates the court order and the Voting Rights Act.

“Let’s be clear: The Alabama Legislature believes it is above the law,” the plaintiffs said in the statement. “What we are dealing with is a group of lawmakers who are blatantly disregarding not just the Voting Rights Act, but a decision from the U.S. Supreme Court and a court order from the three-judge district court.”

Implications

Several Democrats said during debates Friday that they believed Republicans were trying to get rid of the Voting Rights Act entirely.

“This is designed to protect a few people and ultimately trying to finish off the Voting Rights Act,” England said.

Senate Minority Leader Bobby Singleton, D-Greensboro, said that he thinks that the Republican supermajority Senate is trying to draw a map where there were no Black elected officials.

“I guess you made America great again when you’re making sure you silence the voice of Black folk in this state,” he said.



📷 Senate Minority Leader Bobby Singleton, D-Greensboro, during a special session on redistricting on Friday, July 21, 2023 in Montgomery, Alabama. (Stew Milne for Alabama Reflector)

He said they never sat down with a demographer and legal team together. He said they could have rejected their feedback, but they were never allowed to give feedback.

Smitherman invoked Alabama’s Jim Crow era, when Black Alabamians were disenfranchised by white officials.

He suggested that the state could return to the literacy tests given to voters, which infamously included impossible or near impossible questions for Black would-be voters.

“Getting folks to count jelly beans in jars and being able to recite the Constitution,” he said.

England said that he will put his money and hope in the federal courts.

“Hopefully, they will save Alabama from themselves,” he said.

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ALANDER ROCHA  

Alander Rocha is a journalist based in Montgomery, and he reports on government, policy and healthcare. He previously worked for KFF Health News and the Red & Black, Georgia's student newspaper. He is a Tulane and Georgia alumnus with a two-year stint in the U.S. Peace Corps.

MORE FROM AUTHOR



JEMMA STEPHENSON  

Jemma Stephenson covers education as a reporter for the Alabama Reflector. She previously worked at the Montgomery Advertiser and graduated from the Columbia University Graduate School of Journalism.

MORE FROM AUTHOR

RELATED NEWS

The Livingston Plan is a Compact, Communities of Interest Plan that applies the State’s traditional districting principles fairly across the State.

- The 2023 Plan is a historic map that gives equal treatment to important communities of interest in the State, including three that have been the subject of litigation over the last several years—the Black Belt, the Gulf, and the Wiregrass.
- No map in the State’s history, and no map proposed by any of the Plaintiffs who challenged the 2021 Plan, does better in promoting any one of these communities of interest, much less all three.

The Livingston Plan is based on neutral principles, especially (1) promoting communities of interest the Black Belt, the Gulf, and Wiregrass, and (2) ensuring that the State’s longstanding principle of compact districts is given a fuller and fairer effect. While the plan is not based on race, the result of fairly applying these neutral principles is that the BVAP in District 2 has increased from **30.1%** under the 2021 Plan, to **38.3%** under the 2023 Plan.

- Meanwhile, District 7 preserves much of its core, while becoming more compact in Jefferson County, and closing off the split of Montgomery County to make that Black Belt County whole.
- These numbers are comparable to the numbers endorsed by the Milligan Plaintiffs. And District 2’s demographics are right in line with what Plaintiffs’ experts say you would expect if a plan were drawn based on neutral principles rather than race.

The Livingston Plan complies with the Voting Rights Act.

- The Supreme Court made clear in Alabama’s case that “§ 2 never requires adoption of districts that violate traditional redistricting principles.”¹
- The Court’s ruling was based on the principles applied in the 2021 Plan and the limited record in that case. The 2021 Plan gave less weight to communities of interest and compactness—the Black Belt was divided among three districts and the districts as a whole were less compact than in my plan. Thus, under the 2021 principles, it was possible for plaintiffs to draw two reasonably configured majority-black districts.
- The Court concluded that the Plaintiffs’ plans would not have violated the State’s compactness principle because on average the Plaintiffs’ plans were more compact than the 2021 Plan. And the Court concluded that the Plaintiffs’ maps would not have violated the traditional principle of communities of interest

¹ *Allen v. Milligan*, 143 S. Ct. 1487, 1510 (2023)

because their maps did well on one community (the Black Belt) while the 2021 Plan did well on another (the Gulf).

- The Livingston Plan gives fuller and fairer weight to those important and long-recognized principles. Plaintiffs said that the “heart of their case” was the division of the Black Belt counties. This map gives full effect to that community of interest by placing all 18 core Black Belt counties into just two districts—the smallest number of districts in which they can fit.
- But doing so does not require us to split the Gulf or Wiregrass communities of interest. Thus, to the extent we can preserve those communities of interest without dividing the Black Belt, the Livingston Plan does so.
- The Voting Rights Act does not require States to violate those traditional districting principles—it just requires us to apply them fairly. And the Livingston Plan does that.

The Black Belt, Gulf, and Wiregrass can all be given effect.

- The 2023 Plan shows that none of these communities of interest has to be sacrificed in a congressional plan. The 2023 Plan unites the Black Belt within just two districts and keeps the Gulf together, as it has been for over 50 years.
- The Legislature has before it reams of evidence that the state litigants were not able to assemble in early 2022 during the few short weeks they were given before the emergency hearing in the redistricting cases. This additional evidence confirms that the Gulf is a strong community of interest.
- But keeping the Gulf together doesn’t mean the Black Belt needs to be divided. Because of their population and location, the 18 core Black Belt counties cannot all be placed in one district, but they can be and will be placed in just two districts. Plus, of the 5 additional counties that are sometimes considered part of the Black Belt, 4 of them are also within these two Black Belt districts. Finally, not a single Black Belt County is split between congressional districts.
- The Plaintiffs challenging the 2021 plan told the Supreme Court that “the heart” of their case was “Alabama’s treatment of the Black Belt” in its congressional maps. Indeed, they referenced the Black Belt more than **50 times** in their Supreme Court brief. We hope the Plaintiffs will support the 2023 Plan, which addresses any concerns about dividing the Black Belt.
- Many of the maps proposed to the Redistricting Committee would sacrifice the Gulf and Wiregrass communities of interest in favor of race. Section 2 does not require that result and the Constitution forbids it.

- Plus, favoring race over neutral principles would likely lead to more litigation over the Constitution’s Equal Protection Clause. Senator Singleton’s lawyer has basically promised as much, and they’re not the only ones who might raise a racial gerrymandering claim
- Plaintiffs could note that just a few weeks ago, the Supreme Court declared Harvard’s race-based admissions policy unconstitutional because “the core purpose of the Equal Protection Clause” is “doing away with all governmentally imposed discrimination based on race.”² The Court was clear: “Eliminating racial discrimination means eliminating all of it.”³
- The Court held that “race may never be used as a ‘negative’ and that it may not operate as a stereotype.”⁴ But in Plaintiffs’ Proposed Plans, voters in Mobile County are divided from voters in Mobile City because of their race and because of stereotypes about how voters of certain races will vote.
- During the Committee’s public hearings on potential plans, we heard impassioned pleas from a diverse array of Alabamians who care about their State and this process. Among them were several black Alabamians who urged the Committee not to stereotype them by adopting a plan on the assumption that people who look a certain way are going to vote a certain way. Their request is also the Constitution’s demand. The 2023 Plan unites the Black Belt, preserves the Gulf, and complies with the Voting Rights Act and the Constitution. The Plan heeds the Supreme Court’s instruction and rejects divisive calls to “pick winners and losers based on the color of their skin.”⁵

While some have asserted that the Voting Rights Act requires that two of Alabama’s districts be composed of a majority of black voters, that’s not the case.

- The Voting Rights Act requires that the State’s traditional principles be applied fairly across the State.
- Indeed, for years, the Milligan Plaintiffs consistently supported a plan in which the two districts with the highest percentage of black voters were set at **40.5%** and **45.8%**.
- In September 2021, Plaintiffs Evan Milligan and Khadidah Stone, told the Redistricting Committee that the Legislature should adopt a plan with BVAPs of **40.5** and **45.8%**.

² *Students for Fair Admissions v. President & Fellows of Harvard Coll.*, No. 20-1199 (U.S. June 29, 2023), Slip. Op. at 14.

³ *Id.* at 15.

⁴ *Id.* at 27.

⁵ *Id.* at 38.

- Then in 2022, before the U.S. Supreme Court, Milligan and his co-plaintiffs repeatedly endorsed that plan, stating that Alabama did *not* need to create two majority-minority districts.
- Instead, they pointed to the 40/45 plan as “one option” that kept “Mobile and Baldwin together, and raised no racial predominance concerns.”
- They argued that the plan looked like maps one of their experts drew “race-blind,” as opposed to the race-based maps their other expert drew.

And there’s a reason they praised that plan.

- Plaintiffs’ race-blind map drawing expert told the district court that if the State drew without accounting for the race of voters, most plans would not return any district with a BVAP of even **40%**.
- Plaintiffs said that any plan in which even one district was at 50% BVAP would be an “outlier” based heavily on race.
- And they further argued that if the plan had one district with a black voting age population of 50%, the district with the second highest black population would likely be **under 35%**, and certainly not as high as **40%**.
- The Livingston Plan, which is also based on race-neutral principles, includes a District 2 with very similar demographics.
- That makes sense. Black Alabamians make up 25.9% of Alabamians over the age of 18. Only 11 of Alabama’s 67 Counties are majority black, and not even 20% of black Alabamians live in those majority-black counties. It is unsurprising that districts drawn based on colorblind principles would not lead to anything like the two majority-minority districts pressed by the plaintiffs.

Responses to possible questions:

- The courts did not resolve which communities of interest can or cannot be kept together in Alabama’s plan.
 - All the courts found was (1) that the evidence litigants assembled on an expedited 6-week schedule was insufficient to support their argument that the Gulf Coast region was a community of interest, and (2) that Plaintiffs maps did as well on communities of interest because they better joined the Black Belt counties together into two districts.
 - The Court did *not* hold that on a different record the Gulf could not be considered a community of interest. And there are mounds of evidence supporting that determination.
 - Indeed, the district court’s preliminary injunction order stated that if the advantages of keeping the Gulf together “really are as compelling as Defendants suggest, we expect that the Legislature will assign them great weight when it draws a replacement map.”⁶
 - The interests are that compelling. As Rep. Adline Clarke, a Democrat from Mobile, said in 2021, “I consider Mobile and Baldwin counties one political subdivision and would prefer that these two Gulf Coast counties remain in the same congressional district because government, business and industry in the two counties work well together -- with our congressman -- for the common good of the two counties.”

⁶ *Singleton v. Merrill*, 582 F. Supp. 3d 924, 1015 (N.D. Ala. 2022).

Among Plaintiffs' maps attacking the 2021 Plan, the Milligan maps were generally more compact than the Caster maps. The compactness scores for the Milligan maps on Polsby-Popper and Reock are below. Higher is better. Highest scores are in **bold**.

	Reock	Polsby-Popper
Plan A:	0.378	0.256
Plan B:	0.365	0.282
Plan C:	0.338	0.255
Plan D:	0.399	0.249

Below are three of several potential maps that could be drawn that would (1) combine elements of the Pringle and Livingston Plans while (2) maintaining high scores for compactness. The scores are computed by Dave's Redistricting website. The Redistricting Office's Maptitude software will likely return the same scores, but the map would need to be input into that system to confirm.

For ease of reference, the top Reock and top Polsby-Popper scores for the Milligan Plaintiffs' maps are included in the header of each page.

Milligan Plaintiffs' Top Compactness Scores

Reock .399

Polsby-Popper .282

Option 1

Reock 0.4127

Polsby-Popper 0.2951



Milligan Plaintiffs' Top Compactness Scores

Reock .399

Polsby-Popper .282

Option 2

Reock 0.4146

Polsby-Popper 0.2901



Milligan Plaintiffs' Top Compactness Scores

Reock .399

Polsby-Popper .282

Option 3

Reock 0.4209

Polsby-Popper 0.2966



PROPOSED AMENDMENT TO REAPPORTIONMENT COMMITTEE GUIDELINES

Because the U.S. District Court in *Milligan v. Allen* has ordered the State to enact a new congressional map that remedies the violations of Section 2 of the Voting Rights Act, the Reapportionment Committee shall prioritize all plans that follow the U.S. District Court's guidance. Accordingly, all proposals shall include at least two of seven congressional districts in which members of the plaintiff class identified in *Milligan* have an equal opportunity to elect candidates of choice. In assessing compliance with the Court order, this committee shall consider the court's fact findings on communities of interest, racially polarized voting, and other factors that inform its conclusion that the congressional current map with a single majority-black district illegally dilutes black voting strength.

The committee shall also obtain an written report by an independent expert (a generally recognized authority on the Voting Rights Act) that analyzes any plan submitted to a committee vote. Such report should specifically deliver an opinion and supporting analysis as to whether and how the proposed plan satisfies the U.S. District Court's directives in *Milligan*. All reports should become part of the record for legislative consideration and shared with the public.



**Permanent Legislative Committee on
Reapportionment**
ALABAMA LEGISLATURE
ALABAMA STATE HOUSE
11 S UNION STREET, SUITE 317
MONTGOMERY, AL 36130-4600
(334) 261-0706



July 13 2023

AGENDA:

1. CALL THE MEETING TO ORDER
2. ROLL CALL
3. REVIEW AND APPROVE MINUTES FROM LAST MEETING
4. ADOPT COMMITTEE GUIDELINES
5. PUBLIC HEARING FOR CONGRESSIONAL PLAN
 - a. The sign-up sheets are in the back of the room. Sign up for the plan you wish to speak to.
 - b. The plans being discussed today are:
 - i. VRA Plaintiffs Remedial Map
 - ii. CLC Map 1
 - iii. Singleton Congressional Plan 3
 - iv. Hatcher Remedial Congress Plan 1
6. ADJOURNMENT

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ALABAMA LEGISLATURE

Alabama House, Senate Approve Separate Congressional Maps

Jemma Stephenson and Alander Rocha, Alabama Reflector , July 20, 2023

Share this story:



Sen. Livingston discusses his districting map, behind him, during a special session, Wednesday, July 19, 2023 in Montgomery, Ala. (Alabama Reflector Photo by Stew Milne)

Republican supermajorities in the Alabama House and Senate approved two separate congressional maps with a single majority-Black congressional district and one with a Black population ranging from 38% to 42%.

Democrats in both chambers, who support maps with two majority-Black districts, opposed both proposals and said they would not satisfy federal courts that ruled that the state's earlier congressional maps violate the Voting Rights Act.

"We were screaming this and screaming this last time we drew these districts," said Sen. Rodger Smitherman, D-Birmingham.

The House of Representatives voted 74-27, with two abstentions, for a map with a 51.55% Black district and a 42.45% Black district. The



Senate voted 24-8 for a map that established two Black districts of 38.31% and 50.43%. Sen. Andrew Jones, R-Centre, was the only Republican in either chamber to vote against the maps; the Republican Senate proposal splits Etowah County, part of Jones' district, between two congressional districts, which Jones said his constituents oppose.

The votes came about six weeks after the U.S. Supreme Court [upheld a 2022 lower court ruling](#) that Alabama's congressional maps violated the Voting Rights Act. The case, *Allen v. Milligan*, was brought by Black plaintiffs who said the map adopted in 2021 packed Black voters into the state's 7th Congressional District, making it harder for them to form alliances with white voters and elect the leaders of their choosing.

The three-judge panel ruled for the plaintiffs, citing the intense racial polarization of voting in Alabama, where white Alabamians tend to support Republicans and Black Alabamians tend to support Democrats. It ordered the state to draw new maps that at a minimum gave Black voters the opportunity to elect two representatives of their choice.

The Legislature must submit new congressional maps to the federal court by Friday. If it misses the deadline, or if the court considers the map unsatisfactory, it could order a third party, known as a special master, to draw maps for it.

The bills approved by the chambers Wednesday will likely not be the maps the court gets. Sen. Steve Livingston, R-Scottsboro, [who sponsored the Republican Senate proposal](#), said he expected work on a "new map" to begin on Thursday as a compromise between Republicans in the chamber.

“I don’t think it will be proposed tomorrow, but I think there will be a new map worked on tomorrow I would expect, yes,” Livingston said.

Livingston said Senate Republicans began working on their own map because the committee “got some information” that led them to prioritize “compactness and communities of interest being as important as the Black Voting Age Population.” Livingston, who did not say where the information came from, said he had not heard concerns from senators about districts being over 40% Black.

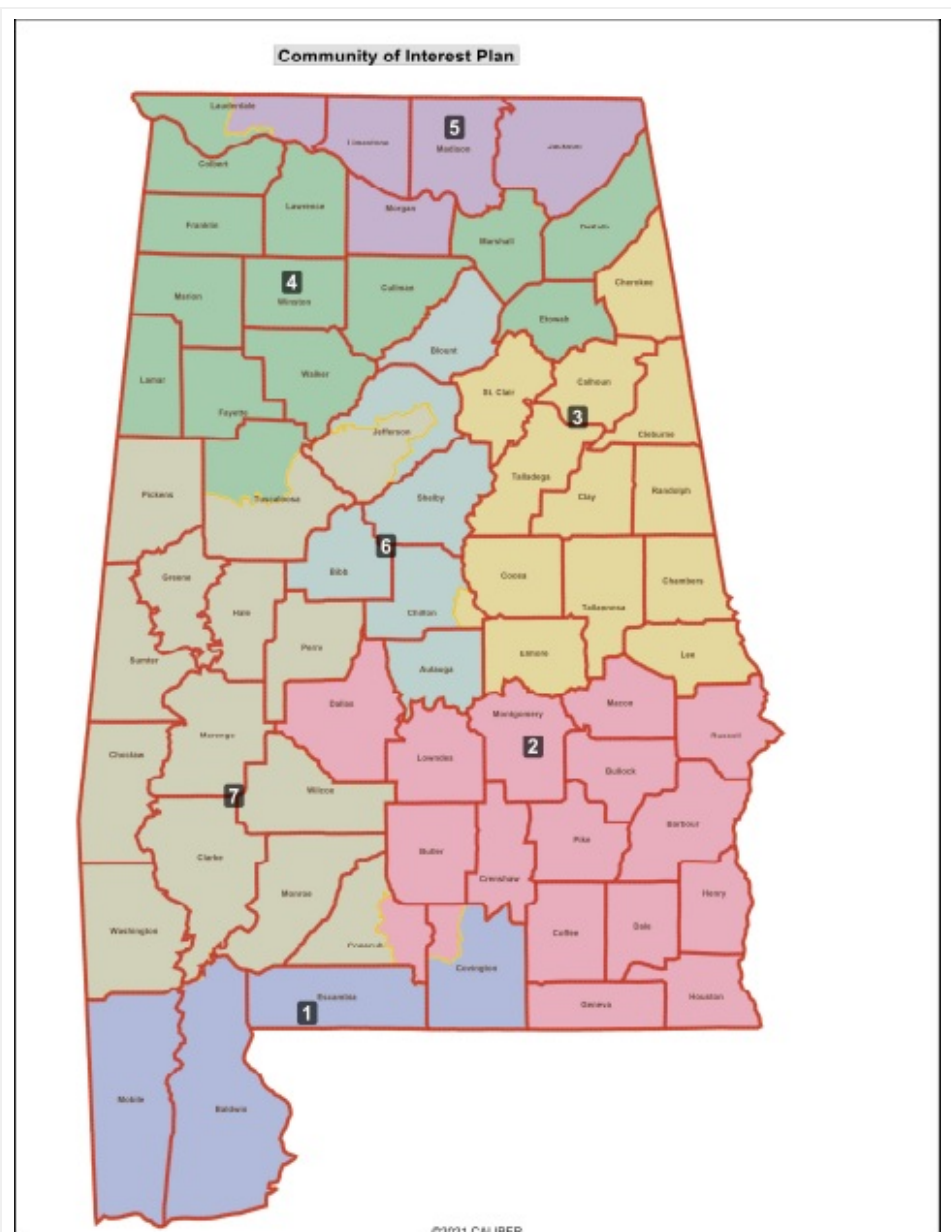
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Remedies

The “Community of Interest” plan, a proposed congressional map, was adopted by the Alabama House on July 19, 2023. (Alabama Legislature)

The maps, sponsored by Livingston and the reapportionment committees’ co-chair Rep. Chris Pringle, R-Mobile, mainly alter the boundaries of the 7th and 2nd Congressional Districts.

The House map adds heavily-Democratic Dallas and Lowndes counties to the 2nd Congressional District; puts all of Democratic-leaning Montgomery in the district and removes



heavily-Republican
Autauga and Elmore
counties. The Senate
map keeps Elmore

The “Community of Interest” plan, a proposed congressional map, was adopted by the Alabama House on July 19, 2023. (Alabama Legislature)

County in the 2nd district and puts all of Montgomery in the district but does not add any other Democratic-leaning counties to the district.

Democrats and Republicans clashed Wednesday over what the court would consider an acceptable proposal. The three-judge panel wrote in January 2022 that the Legislature should “include either an additional majority-Black congressional district, or an additional district in which Black voters otherwise have an opportunity to elect a representative of their choice.”

Pringle and Livingston repeatedly cited that language during the debates on Wednesday, saying Black voters could elect their preferred candidates without constituting a majority.

“(The court ruling) clearly said we are either to draw another majority-minority district, or a district that provides the opportunity for the minority to elect the candidate of their choosing,” Pringle said.

Livingston said he believed a Democrat could win a congressional district that is 38% Black.

“The question is, what is the opportunity there?” the senator said after the vote on Wednesday. “I think everybody has a different interpretation of what opportunity is.”

The judges, however, went on to write in the January 2022 opinion that the “practical reality” was that “any remedial plan will need to include two districts in which Black voters either comprise a voting-age majority or something quite close to it.” House Democrats said 42% does not come close to that.

“You cannot be the minority in population and elect your person of choice,” House Minority Leader Anthony Daniels, D-Huntsville, said after the vote on Wednesday. “You don’t have the numbers to do that.”

Senate Democrats were also skeptical. Senate Minority Leader Bobby Singleton, D-Greensboro, said that the 2nd Congressional District proposed by the Senate would have been carried by President Donald Trump by 12 points.



This proposed congressional map, sponsored by Sen. Steve Livingston, R-Scottsboro, would create a 7th congressional district that would be a little over 50% Black and a 2nd congressional district that would be about 38% Black. (Permanent Legislative Reapportionment Committee)

“I would say that the map that my colleague across the aisle has at 38% doesn’t meet that burden of ‘quote close’ to it,” said Sen. Merika Coleman, D-Pleasant Grove.

During the process, Democrats have criticized a lack of transparency in the process as the Republican maps were not offered during the public hearing, and the Livingston map was offered in committee. Senate Democrats said they were not given “functionality reports” on the proposed maps, which would show how Democrats might perform in elections in the proposed districts, and complained that they were not consulted in drawing the maps.

“That would have been easy, wouldn’t it?” Singleton asked.

“It would’ve been easy,” agreed Livingston.

Democratic Proposals

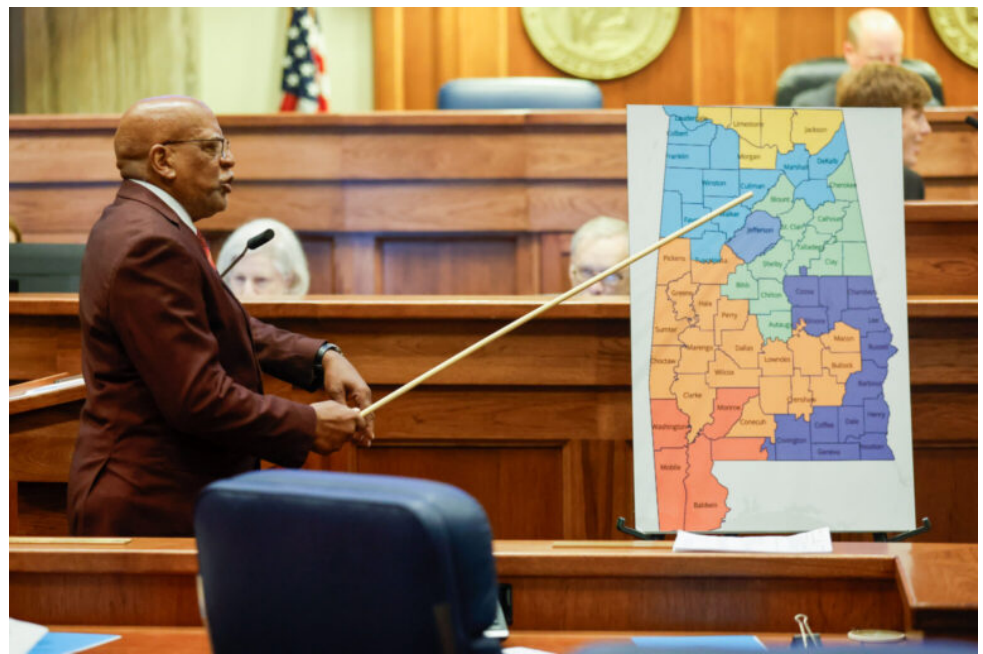
Democrats in both chambers supported a map developed by the Milligan plaintiffs. The map would create a 7th Congressional District with a Black population of 54.5% and a

2nd Congressional District – taking in Montgomery; northern Mobile; the eastern Black Belt and several counties north of Mobile – with a Black population just over 50%

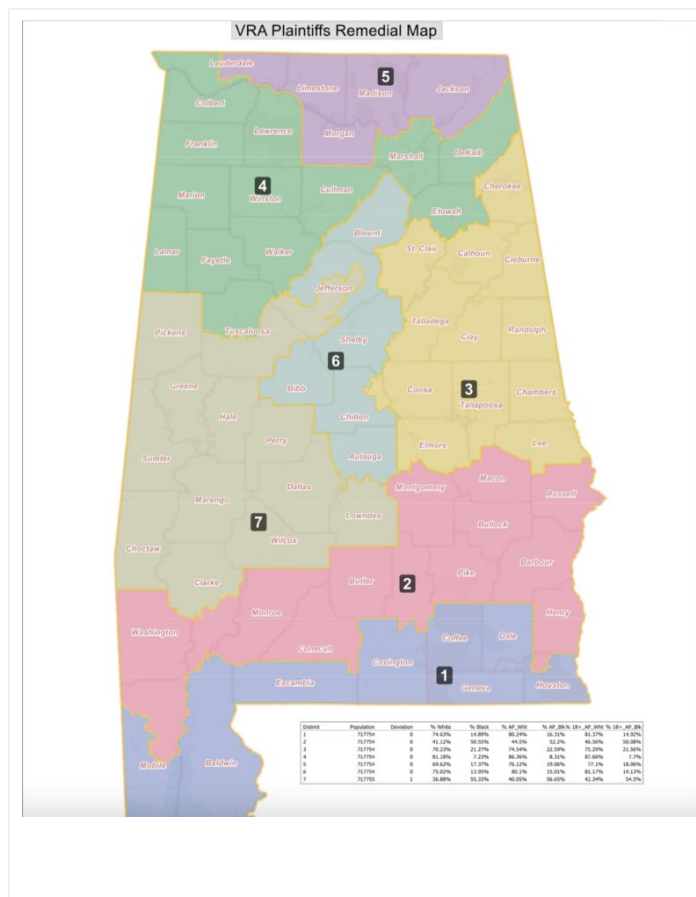
Republicans voted down both proposals.

Sen. Vivian Davis Figures, D-Mobile, who sponsored the proposal in the Senate, said that she

prayed “that I live long enough to see the day when Alabama can elect officials to the Alabama State Legislature and to Congress that will vote with their hearts.”



Sen. Smitherman discusses an amendment during a special session, Wednesday, July 19, 2023 in Montgomery, Ala. (Alabama Reflector Photo by Stew Milne)



“If you all were the 28% of the population in this state of Alabama, and every constitutional officer in this state was Black and a Democrat, and every judge in the high courts of the state were Black and a Democrat, and you were not listened to nor respected or had your voice heard in this Legislature, how would you feel and what the hell would you do?” she said to her Republican colleagues. “You would raise hell.”

Several Democrats also accused Republicans of brazenly ignoring the court’s directions. Rep. Chris England, D-Tuscaloosa, who sponsored the Milligan plan in the House, sharply criticized Pringle and Livingston,

Sen. Rodger Smitherman, D-Birmingham, discusses a Democratic congressional map proposal during a special session on redistricting on Wednesday, July 19, 2023 in Montgomery, Ala. (Stew Milne for Alabama Reflector)

accusing them of supporting maps that had no public input and of using arguments that the U.S. Supreme Court had already rejected.

“Your map is the quintessential definition of noncompliance,” he said. “It takes rejected arguments and memorializes them in a map and (says) ‘we’re going to give it right back to you and tell you to take it or leave it.’”

Rep. Juandalynn Givan, D-Birmingham, was even more direct.

“I can’t say the word, but you all have basically dropped the F-bomb on the United States Supreme Court,” she said.

Pringle defended the percentages of Black voters, suggesting there was testimony from the Milligan plaintiffs that they would accept the Black population in the 2nd district.

“There are filings and sworn testimony that 40% BVAP (Black Voting Age Population) would perform well enough to elect the candidate of their choosing,” he said.

Democrats said afterward that those percentages would only potentially work in urban counties like Jefferson or Madison, where there is more racial crossover in voting, and not the rural Wiregrass, the heart of the 2nd Congressional District, where racial polarization is high.

“The Supreme Court’s decision was squarely that the state of Alabama had to redraw a map that gave two majority-minority districts or something close to it,” said Rep. Prince Chestnut, D-Selma. “So bringing in some extraneous statement that may or may not have taken place is irrelevant to the context for why we as a Legislature are here today.”

Senate Democrats proposed several different maps, some of which would have drawn Jefferson County, the home of Birmingham, into its own congressional district. Those proposals were also voted down.

“If you look at the map that we are to consider today, it busted up Jefferson County like one of those atomic bombs,” Smitherman said.

Both Pringle and Livingston's maps keep Mobile paired with Baldwin County, a deep red area with a Black population of under 8%. Democratic proposals put a portion of Mobile in the 7th Congressional District in the Black Belt. Rep. Barbara Drummond, D-Mobile, felt that her constituents have more in common with the Black Belt than the larger coastal area.

"Do [Black Alabamians in Mobile] have a lineage from Baldwin County?" she asked.

The Pringle map goes to the Senate committee Thursday, while the Livingston map goes to the House committee. The maps need to pass both chambers Friday. A conference committee would need to take place for a new map to be submitted to the Legislature by the deadline.

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JEFFERSON COUNTY COMMISSION

In Search of Midnight Oil: JeffCo County Manager Preparing for Annual Budget Hearings

July 27, 2023

County Manager Cal Markert displayed a wry smile when asked if he is looking forward to budget hearings in August.

"I look forward to it being over and done, I guess," he said after the Jefferson County Commission's meeting today in Bessemer. "It's coming up and we've got to do it. It's just a lot of extra work. Not extra work but a lot of work."

Setting the county's budget is an annual balancing act of determining where funds can be allotted to accomplish needed projects, and it involves hearings during which department heads meet with Markert and county commissioners to make their case for requested funds during fiscal 2024. [Read more.](#)

User:

Plan Name: **Opportunity**

Plan Type: congress

Population Summary

Monday, July 17, 2023

9:31 AM

District	Population	Deviation	% Devn.	[% White]	[% Black]	[% AP_Wht]	[% AP_Blkl]	[% 18+_AP_Wht]	[% 18+_AP_Blkl]
1	717,754	0	0.00%	65.36%	25.07%	70.31%	26.46%	71.9%	24.63%
2	717,754	0	0.00%	52.37%	38.31%	56.58%	39.99%	58.15%	38.31%
3	717,754	0	0.00%	70.16%	21.15%	74.48%	22.49%	75.28%	21.42%
4	717,755	1	0.00%	81.02%	7.4%	86.18%	8.48%	87.52%	7.83%
5	717,754	0	0.00%	69.62%	17.37%	76.12%	19.06%	77.1%	18.06%
6	717,754	0	0.00%	70.12%	18.4%	75.11%	19.47%	76.4%	18.35%
7	717,754	0	0.00%	40.04%	52.88%	43.12%	54.19%	45.17%	52.29%

Total Population: 5,024,279

Ideal District Population: 717,754

Summary Statistics:

Population Range: 717,754 to 717,755

Ratio Range: 0.00

Absolute Range: 0 to 1

Absolute Overall Range: 1

Relative Range: 0.00% to 0.00%

Relative Overall Range: 0.00%

Absolute Mean Deviation: 0.14

Relative Mean Deviation: 0.00%

Standard Deviation: 0.35

- Chris
- The Plaintiffs consistently supported a plan in which the two districts with the highest percentage of black voters were set at 40.5% and 45.8%.
 - In September 2021, Plaintiffs Evan Milligan and Khadidah Stone, told this Committee that the Legislature should adopt the Singleton plan.
 - We have Mr. Milligan's email to the Committee, and he confirmed at the hearing in his lawsuit that he supported that 40/45% Plan.
 - Then in 2022, before the U.S. Supreme Court, he and his co-plaintiffs *repeatedly* endorsed the Singleton Plan.
 - In their brief, they said that Alabama did *not* need to create two majority-minority districts.
 - They stated that the "Singleton Plan" was "one option" that kept "Mobile and Baldwin together, and raised no racial predominance concerns."¹
 - At oral argument, Milligan Plaintiffs' lawyer stated that their expert's "race-blind" maps "looked very similar to the Singleton plan, which allowed for two crossover districts where minority voters would have a fair chance to elect their candidates of choice in at least two districts."²
 - He was clear "[W]e'd be satisfied with something like the Singleton plan, which Alabama's expert said would give black voters at least a fair chance, not even a guaranteed chance to elect their candidates of choice in the Second District. That's merely what ... plaintiffs are looking for."³
 - Now Plaintiffs are demanding more.
 - They pretend like they didn't endorse a 40/45% plan.
 - They demand a plan that provides not just a "fair chance" to compete, but instead a near guarantee of Democratic victories in at least two districts.
 - Nothing in the Supreme Court's opinion entitles them to such a map. Jim Blacksher represents Senator Singleton and Smitherman in their challenge to the 2021 map. And he asserts that the use of race in Plaintiffs' plan would violate the Constitution's guarantee of equal protection under the law. He makes a strong case.

¹ See Milligan Brief at 44-45, *Allen v. Milligan*, 143 S. Ct. 1487 (2023).

² See Oral Argument Tr. at 65, *Allen v. Milligan*, 143 S. Ct. 1487 (2023).

³ *Id.* at 70.

- The Court held that “race may never be used as a ‘negative’ and that it may not operate as a stereotype.”¹⁰ But in Plaintiffs’ Proposed Plans, voters in Mobile County are divided from voters in Mobile City because of their race and because of stereotypes about how voters of certain races will vote. They would want us to “pick winners and losers based on the color of their skin.”¹¹
- The courts did not resolve which communities of interest can or cannot be kept together in Alabama’s plan.
 - All the courts found was (1) that the evidence litigants assembled on an expedited 6-week schedule was insufficient to support their argument that the Gulf Coast region was a community of interest, and (2) that Plaintiffs maps did as well on communities of interest because they better joined the Black Belt counties together into two districts.
 - The Court did *not* hold that on a different record the Gulf could not be considered a community of interest. And there are mounds of evidence supporting that determination.
 - As Rep. Adline Clarke, a Democrat from Mobile, told AL.com in 2021, “I consider Mobile and Baldwin counties one political subdivision and would prefer that these two Gulf Coast counties remain in the same congressional district because government, business and industry in the two counties work well together -- with our congressman -- for the common good of the two counties.”
 - That’s a pretty good description of a community of interest.
- We are enacting a new 2023 plan, not trying to fix the 2021 plan.
 - Like before, our Guidelines provide that we will comply with the Voting Rights Act and the Equal Protection Clause of the Constitution. Like in 2021, our aim is to produce a map that meets those twin requirements of federal law. There is no need for additional guidelines.

¹⁰ *Id.* at 27.

¹¹ *Id.* at 38.

~~The 2023 Plan is a Communities of Interest Plan.~~

- The ~~2023~~ ²⁰²¹ Plan is a historic map that gives equal treatment to important communities of interest in the State, including three that have been the subject of litigation over the last several years—the Gulf Coast, the Black Belt, and the Wiregrass.
- No map in the State’s history, and no map proposed by any of the Plaintiffs who challenged the 2021 Plan, does better in promoting any one of these communities of interest, much less all three.

Plaintiffs’ Plans sacrifice communities of interest in favor of race.

- When the Milligan and Caster Plaintiffs challenged the 2021 Plan, they offered their own versions of the State’s congressional map—each of which carved up the Gulf and Wiregrass communities of interest by separating Mobile City from the rest of Mobile County and Baldwin County, then stretching that district from Mobile to Montgomery before dipping down all the way to Dothan.
- It was clear these maps were designed to separate voters based on their race. There was no other reason to combine Dothan and Mobile. Indeed, the State has long recognized the unique interests of the Gulf and the Wiregrass, which is why District 1 has long centered on Mobile and Baldwin Counties, while District 2 has been anchored by the Wiregrass.

Plaintiffs put the Black Belt at the center of their Voting Rights Act argument.

- Plaintiffs said that race didn’t drive their lines. They chalked up their sprawling districts to a preference for keeping the Black Belt together. The parties litigating over the 2021 Plan agreed on a list of 18 “core” Black Belt “counties.” And Plaintiffs argued that the 2021 Plan should have put those counties in fewer districts than the three districts that they occupied.
- The Supreme Court agreed. The Court has repeatedly recognized that a plaintiff seeking a new plan under § 2 of the Voting Rights must come forward with a reasonably configured alternative that respects traditional districting principles, including maintaining communities of interest. When the State argued that plaintiffs’ plans failed the § 2 test because they would break up the Gulf, the Court noted that plaintiffs’ plans did better for the Black Belt, meaning that under either the State’s plan or the plaintiffs’ “there would be a split community of interest in both.”

The Black Belt, Gulf, and Wiregrass can all be given effect.

- The ~~2023 Plan~~^{C 3 I} shows that none of these communities of interest has to be sacrificed in a congressional plan. The ~~2023 Plan~~^{C 3 I} keeps the Gulf together, as it has been for over 50 years.
- The Legislature has before it reams of evidence that the state litigants were not able to assemble in early 2022 during the few short weeks they were given before the emergency hearing in the redistricting cases. This additional evidence confirms that the Gulf is a strong community of interest.
- But keeping the Gulf together doesn't mean the Black Belt needs to be divided. Because of their population and location, the 18 core Black Belt counties cannot all be placed in one district, but they can be and will be placed in just two districts. Plus, of the 5 additional counties that are sometimes considered part of the Black Belt, 4 of them are also within these two Black Belt districts. Finally, not a single Black Belt County is split between congressional districts.
- The Plaintiffs challenging the 2021 plan told the Supreme Court that "the heart" of their case was "Alabama's treatment of the Black Belt" in its congressional maps. Indeed, they referenced the Black Belt more than 50 times in their Supreme Court brief. We hope the Plaintiffs will support the ~~2023 Plan~~^{C 3 I}, which addresses any concerns about the Black Belt purportedly being cracked.

While some have asserted that the Voting Rights Act requires that two of Alabama's districts be composed of a majority of black voters, that's not the case.

- Indeed, for years, the Milligan Plaintiffs consistently supported a plan in which the two districts with the highest percentage of black voters were set at **40.5%** and **45.8%**.
- In September 2021, Plaintiffs Evan Milligan and Khadidah Stone, told the Redistricting Committee that the Legislature should adopt a plan with BVAPs of **40.5** and **45.8%**.
- Then in 2022, before the U.S. Supreme Court, Milligan and his co-plaintiffs repeatedly endorsed that plan, stating that Alabama did *not* need to create two majority-minority districts.
- Instead, they pointed to the 40/45 plan as "one option" that kept "Mobile and Baldwin together, and raised no racial predominance concerns."
- They argued that the plan looked like maps one of their experts drew "race-blind," as opposed to the race-based maps their other expert drew.

And there's a reason they praised that plan.

- Their race-blind map drawing expert told the district court that if the State drew without accounting for the race of voters, most plans would not return any district with a BVAP of even **40%**.
- Plaintiffs said that any plan in which even one district was at 50% BVAP would be an “outlier” based heavily on race.
- And they further argued that if the plan had one district with a black voting age population of 50%, the district with the second highest black population would likely be **under 35%**, and certainly not as high as **40%**.
- That makes sense. Black Alabamians make up 25.9% of Alabamians over the age of 18. Only 11 of Alabama's 67 Counties are majority black, and not even 20% of black Alabamians live in those majority-black counties. It is unsurprising that districts drawn based on colorblind principles would not lead to anything like two majority-minority districts.

The 2023 Plan is based on neutral principles, especially promoting the Black Belt, followed by the Gulf and Wiregrass. As a result, the BVAP in District 2 has increased from **30.1%** under the 2021 Plan, to ~~38.3%~~ **42.45%** under the 2023 Plan.

- Meanwhile, District 7 preserves much of its core, while becoming more compact in Jefferson County, and closing off the split of Montgomery County to make that Black Belt County whole. As a result, District 7 ends up with a BVAP of ~~49.3%~~ **51.55%**.
- These numbers are comparable to the numbers endorsed by the Milligan Plaintiffs. And District 2's demographics are right in line with what Plaintiffs' experts says you would expect if there was no racial discrimination in the plan.

Some may demand that the Legislature use race to alter these districts. But the Supreme Court made clear in Alabama's case that “§ 2 never requires adoption of districts that violate traditional redistricting principles.”¹

- The Supreme Court concluded that Plaintiffs' maps would not have violated the traditional principle of communities of interest because their maps did well on one community while the ~~2021 Plan~~ **2021 Plan** did well on the other. But the 2023 Plan does well on both those communities of interest, and Plaintiffs have not produced a plan that creates a new majority-minority district without sacrificing the Gulf. This map thus does not violate § 2; it treats these communities equally while Plaintiffs would toss one aside.
- And sacrificing communities of interest in service of race would likely lead to more litigation over the Constitution's Equal Protection Clause. Senator

¹ *Allen v. Milligan*, 143 S. Ct. 1487, 1510 (2023)

Singleton’s lawyer has basically promised as much, and they’re not the only ones who might raise a racial gerrymandering claim.

- Plaintiffs could note that just a few weeks ago, the Supreme Court declared Harvard’s race-based admissions policy unconstitutional because “the core purpose of the Equal Protection Clause” is “doing away with all governmentally imposed discrimination based on race.”² The Court was clear: “Eliminating racial discrimination means eliminating all of it.”³
- The Court held that “race may never be used as a ‘negative’ and that it may not operate as a stereotype.”⁴ But in Plaintiffs’ Proposed Plans, voters in Mobile County are divided from voters in Mobile City because of their race and because of stereotypes about how voters of certain races will vote.
- During the Committee’s public hearings on potential plans, we heard impassioned pleas from a diverse array of Alabamians who care about their State and this process. Among them were several black Alabamians who urged the Committee not to stereotype them by adopting a plan on the assumption that people who look a certain way are going to vote a certain way. Their request is also the Constitution’s demand. The 2023 Plan unites the Black Belt, preserves the Gulf, and complies with the Voting Rights Act and the Constitution. The Plan heeds the Supreme Court’s instruction and rejects divisive calls to “pick winners and losers based on the color of their skin.”⁵

² *Students for Fair Admissions v. President & Fellows of Harvard Coll.*, No. 20-1199 (U.S. June 29, 2023), Slip. Op. at 14.

³ *Id.* at 15.

⁴ *Id.* at 27.

⁵ *Id.* at 38.

Responses to possible questions:

- The courts did not resolve which communities of interest can or cannot be kept together in Alabama's plan.
 - All the courts found was (1) that the evidence litigants assembled on a an expedited 6-week schedule was insufficient to support their argument that the Gulf Coast region was a community of interest, and (2) that Plaintiffs maps did as well on communities of interest because they better joined the Black Belt counties together into two districts.
 - The Court did *not* hold that on a different record the Gulf could not be considered a community of interest. And there are mounds of evidence supporting that determination.
 - Indeed, the district court's preliminary injunction order stated that if the advantages of keeping the Gulf together "really are as compelling as Defendants suggest, we expect that the Legislature will assign them great weight when it draws a replacement map."⁶
 - The interests are ~~that~~ compelling. As Rep. Adline Clarke, a Democrat from Mobile, said in 2021, "I consider Mobile and Baldwin counties one political subdivision and would prefer that these two Gulf Coast counties remain in the same congressional district because government, business and industry in the two counties work well together -- with our congressman -- for the common good of the two counties."

⁶ *Singleton v. Merrill*, 582 F. Supp. 3d 924, 1015 (N.D. Ala. 2022).

The 2023 Plan complies with Section 2 of the Voting Rights Act.

- In February 2022, both Chief Justice Roberts and Justice Kavanaugh noted that Section 2 caselaw on redistricting was unclear. Last month, in *Allen v. Milligan*, the Court provided some clarity.
- First, the Supreme Court did *not* hold that Alabama must draw two majority-minority districts, or even two districts that hit racial targets.
- Quite the contrary. The Court made clear that “§ 2 *never* requires adoption of districts that violate traditional redistricting principles.” And “[f]orcing proportional representation” by violating traditional principles “is unlawful and inconsistent with th[e] Court’s approach to implementing § 2.”
- The opinion focused heavily on that part of the § 2 vote dilution test that requires Plaintiffs to produce an alternative map that creates an additional majority-minority district while still complying with the traditional districting principles embodied in the map they are challenging.
- The Court concluded that Plaintiffs likely met this test because they were able to produce maps that respected compactness, county lines, and communities of interest as well as the 2021 Plan while still producing a second majority-minority district.
 - When the State complained that the Plaintiffs’ new majority-minority districts were sprawling, the Court noted that the 2021 Legislature was fine drawing similarly non-compact districts elsewhere in the State.
 - When the State argued that the Plaintiffs’ plans broke up a community of interest in the Gulf, the Court responded that the 2021 Plan broke up a community of interest in the Black Belt.
 - And as Justice Kavanaugh noted in his concurrence, “it [wa]s important that at least some of the plaintiffs’ proposed alternative maps respect county lines at least as well as Alabama’s redistricting plan.”¹
 - The takeaway was that if the State was going to claim to respect compactness and communities of interest, it needed to do so more fully and fairly across the whole map. Otherwise, the map would likely violate § 2.
- With this guidance, the 2023 Legislature has enacted a map that applies those traditional principles fairly across the State.
 - The 2023 Plan continues to recognize the longstanding community of interest in the Gulf, but not at the expense of the Black Belt. In the 2023 Plan, all 18 core Black Belt counties are placed into just two compact districts—the smallest number of districts in which they can fit.

¹ *Allen v. Milligan*, 143 S. Ct. 1487, 1518 n.2 (2023) (Kavanaugh, J., concurrence).

- Western Black Belt counties make up nearly all of District 7. The eastern Black Belt counties—several of which are also part of the Wiregrass—are combined with other Wiregrass counties to form District 2.
- Plaintiffs said that the “heart of their case” was the “cracking” of the Black Belt counties. There is no cracking in this map.
- And because the 2023 Legislature has more evenly respected communities of interest, there is now no need to choose between respecting one community of interest versus another.
- The Black Belt, Gulf, and Wiregrass can all be placed into sensible districts likely to represent their unique interests.
- The 2023 Plan likewise applies the principle of compactness more fully and fairly. Each district from the top of the map to the bottom has seen significant changes that make the map overall far more compact and sensibly arranged than before.
 - The eyeball test alone makes clear that this map is more reasonably compact than the one it has replaced. But commonly accepted metrics of compactness also confirm that the map is more compact than its predecessors.
- The 2023 Plan based on this Legislature’s fuller and fairer application of traditional districting principles satisfies the requirements of § 2.
 - In 2021, Plaintiffs could argue that the 2021 Plan resulted in special treatment to different parts of the State. But that isn’t the case anymore. Because the 2023 Plan is shaped by a fuller, fairer application of traditional districting principles, it is no longer the case that there are alternative plans that respect those principles “at least as well as Alabama’s redistricting plan” while still producing two majority-minority districts.² That means that § 2 is satisfied.
 - Because the 2023 Plan more fairly applies its principles, black voting age population happens to rise significantly in District 2, which is now home to all the eastern Black Belt counties. In the 2021 Plan, BVAP was about **30%**, and in the 2023 Plan it will be about **40%**. Based on past voting trends, the district will likely have more competitive general elections than it has had any time since 2010. This is what an equally open districting plan looks like.
 - It also happens to be at the highest level the Plaintiffs’ expert said one would expect District 2 to reach if a mapdrawer was using only

² *Allen v. Milligan*, 143 S. Ct. 1487, 1518 n.2 (2023) (Kavanaugh, J., concurring).

traditional neutral principles to draw a map, rather than sacrificing those principles to race.

- Meanwhile, District 7 continues to become more compact, and thus ends up moving from **54% BVAP** to about **50% BVAP**.
- The maps Plaintiffs produced in 2021 did not violate the 2021 principles, which allowed for non-compact districts and split communities of interest. But Plaintiffs' old maps do violate the principles that are fairly applied in the 2023 map.
- And as the Supreme Court said last month, "§ 2 never requires adoption of districts that violate traditional redistricting principles."³ So this map satisfies § 2.
- In short, the State's map answers Plaintiffs' call to unite the Black Belt. It avoids treating voters differently based on their race. And in respecting neutral principles blessed by the Supreme Court's recent opinion, the 2023 Plan produces districts that are fairer, more sensible, and more competitive than they have been in decades. We hope Plaintiffs and others across the State will welcome this new, equally open map.

Opportunity vs. guarantee.

- Plaintiffs have repeatedly claimed that they are not seeking a "guarantee" that black voters in CD2 or CD7 will elect the candidate of their choice. They say they are entitled only to an "opportunity" or "fair chance."
- They then claim that their version of CD2, which in the 2020 Senate race would have gone for Doug Jones by over **17 points**, is a district that provides an "opportunity" for Democratic voters, but no guarantee.
- By that standard, the 2023 Plan easily provides an "opportunity," but no guarantee to any voter. In the 2023 Plan's District 2, Senator Tuberville would have won his race in 2020 by about **4 points**, a far smaller margin of victory.
- Likewise, in Plaintiffs' plan, President Biden would have won their District 2 in 2020 by more than **12 points**, while in the 2023 Plan, President Trump's margin would have been less than **9 points**. If the Plaintiffs' plan provides only an opportunity, but no guarantee, so does this Plan.

³ *Id.* at 1510.