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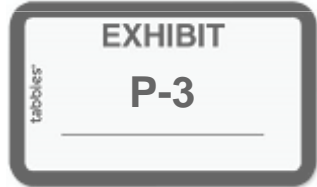
FairMaps_Redistricting_3520305-0003

Case ReportBook

Authored by:

Alix Cossette
SLS

Tuesday, July 11, 2023



Introduction

This ReportBook contains a collection of transcript reports we have prepared for this matter.

Some of the reports in this ReportBook may include our annotations of transcript sections of interest and our notes/comments regarding the transcript. It is important to understand that these annotations and notes are a work in progress, not polished or final product. We're using them to capture our ongoing analysis of the transcripts. As the analysis process continues, the annotations and notes will grow and change.

An important part of the reason for circulating ReportBooks is to get everyone involved in the case analysis process. We've found that it expedites the process of developing a complete and accurate understanding of the matter at hand.

When you notice important points during your review of the following reports, please be sure to let us know.

Thank you for your assistance!

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FairMaps_Redistricting_3520305-0003

Clark, Scott 2023.05.10

5/10/2023

Annotation Digest - All Annotations

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TextMap Annotation Digest Report

Case Name: FairMaps_Redistricting_3520305-0003

Transcript: [5/10/2023] Clark, Scott 2023.05.10

Pg: 5 Ln: 1 - Pg: 6 Ln: 4

Annotation:

5: 1 (WHEREUPON, the deposition began at
2 10:03 a.m.)
3 SCOTT CLARK, having affirmed to tell the truth,
4 testified as follows:
5 DIRECT EXAMINATION BY MR. HATFIELD:
6 Q. Good morning, sir.
7 A. Good morning.
8 Q. What is your name?
9 A. My name is Scott R. Clark.
10 Q. Scott Clark. You are here, as I
11 understand it, to testify on behalf of the Office
12 of the Missouri Secretary of State; is that
13 correct?
14 A. That's correct.
15 Q. I'm going to hand you what's been
16 marked as Exhibit 1 and ask you if you've seen that
17 before?
18 A. Yes.
19 Q. And these are topics that we asked
20 for someone from the Secretary of State's Office to
21 address, and are you prepared to address all of
22 these topics today?
23 A. The majority, yes.
24 Q. Okay. Are there any that you notice
25 where you're like I can't really handle that one?
6: 1 A. No, not offhand.
2 Q. All right. And so what do you do for
3 the Secretary of State?
4 A. I am the Deputy Chief of Staff.

Pg: 20 Ln: 3 - 15

Annotation:

20: 3 Q. I understand -- well, we've got some
4 topics here. The Secretary of State has said that
5 that final Senate map complies with all the factors
6 contained in Article III, Section 3 and Section 7.
7 I assume that's still the Secretary's position?
8 A. Yes.
9 Q. Why?
10 A. It was filed with our office as
11 required by the Constitution. It was received in
12 and used for the apportionment and redistricting.
13 Facially, I think the map speaks for itself. It
14 has 34 distinct districts found on the map and
15 describes a redistricting map.

Pg: 20 Ln: 23 - Pg: 21 Ln: 12

Annotation:

20:23 Q. So a lot of times it's helpful to

TextMap Annotation Digest Report

Case Name: FairMaps_Redistricting_3520305-0003

Transcript: [5/10/2023] Clark, Scott 2023.05.10

Pg: 20 Ln: 23 - Pg: 21 Ln: 12 continued...

Annotation:

20:24 figure out what we agree and what we disagree on.

25 We agree that the new Senate map divides Buchanan

21: 1 County, correct?

2 A. Yes.

3 Q. And when the Secretary tells us that

4 the map complies with the Constitution, how is it

5 that it can divide Buchanan County and still

6 comply?

7 A. There are many requirements in the

8 Constitution specifying what is required for a map.

9 For our purposes as a ministerial duty, we receive

10 the map per the Constitution, we apportioned voters

11 in the state based off of the plan submitted to us,

12 and we redistricted them.

Pg: 20 Ln: 25 - Pg: 21 Ln: 12

Annotation:

20:25 We agree that the new Senate map divides Buchanan

21: 1 County, correct?

2 A. Yes.

3 Q. And when the Secretary tells us that

4 the map complies with the Constitution, how is it

5 that it can divide Buchanan County and still

6 comply?

7 A. There are many requirements in the

8 Constitution specifying what is required for a map.

9 For our purposes as a ministerial duty, we receive

10 the map per the Constitution, we apportioned voters

11 in the state based off of the plan submitted to us,

12 and we redistricted them.

Pg: 24 Ln: 21 - Pg: 25 Ln: 5

Annotation:

24:21 Is it the Secretary's position that

22 it was not possible to comply with another

23 requirement of the Constitution without dividing

24 Buchanan County?

25 A. There are obviously many ways that

25: 1 maps can be drawn.

2 Q. Yeah.

3 A. The map that was presented to us was

4 what was presented to our office.

5 Q. Right.

Pg: 25 Ln: 6 - 19

Annotation:

25: 6 A. Our office is required under the

7 Constitution to defend the map because that's what

TextMap Annotation Digest Report

Case Name: FairMaps_Redistricting_3520305-0003

Transcript: [5/10/2023] Clark, Scott 2023.05.10

Pg: 25 Ln: 6 - 19 continued...

Annotation:

25:8 the Constitution says. And so the map that was
 9 presented in the Secretary of State's Office view
 10 is constitutional because it went through the
 11 process.
 12 Q. Okay. That's helpful. Any other
 13 reason other than it went through the process that
 14 the Secretary takes the position that the map is
 15 constitutional?
 16 A. I think if you facially look at it,
 17 right, it has 34 distinct districts to it. It's --
 18 facially on looking at it, it meets the
 19 requirements.

Pg: 26 Ln: 10 - 25

Annotation:

26:10 Q. All right. So I want to go back to
 11 your discussion that facially -- whatever you said,
 12 facially the map complies. So I'm reading from the
 13 Constitution. Communities shall be preserved. So
 14 are you saying that facially you can look at the
 15 map and tell that communities were preserved?
 16 A. I think if you look at the map, it
 17 has 34 distinct districts to it.
 18 Q. Right.
 19 A. It shows a state that has been
 20 subdivided.
 21 Q. Right.
 22 A. As far as communities being
 23 preserved, that would require an individual, an
 24 expert testimony on particulars that would be a
 25 deeper dive into that.

Pg: 27 Ln: 11 - 21

Annotation:

27:11 A. Okay. And so in looking at, for
 12 example, the 19th, the 19th is a whole county.
 13 It's not a perfect district by, you know,
 14 population distribution, for example, but it is a
 15 whole county.
 16 If you look at other counties, those
 17 counties are divided, and for whatever reason they
 18 were grouped together with another part of the
 19 state. So I think if you look at it, just looking
 20 at it, yes, communities of interest can be said to
 21 have been preserved.

TextMap Annotation Digest Report

Case Name: FairMaps_Redistricting_3520305-0003

Transcript: [5/10/2023] Clark, Scott 2023.05.10

Pg: 31 Ln: 8 - Pg: 32 Ln: 8

Annotation:

31: 8 Q. Okay. So we talked about Buchanan
 9 County a little bit. One of the issues in this
 10 case is also that the final Senate map divides the
 11 city of Hazelwood, and I think you've agreed that
 12 that's the case here, correct?
 13 A. It's my understanding, yes.
 14 Q. And is it the Secretary of State's
 15 position that even though the map divides the city
 16 of Hazelwood, the map still complies with the
 17 requirements of the Constitution?
 18 A. Yes.
 19 Q. And why is that?
 20 MR. LEWIS: I'll object that it calls
 21 for a legal conclusion.
 22 THE WITNESS: In map drawing, there
 23 is the principle, so to speak, that you have to at
 24 some point draw the line.
 25 BY MR. HATFIELD:
 32: 1 Q. Right.
 2 A. Right? And so at some point the
 3 line's got to be drawn, and something's going to go
 4 north or south or east or west of that line to take
 5 holistically the factors of we have to draw a
 6 district and this is where the line has to go at
 7 this point.
 8 Q. Right.

Pg: 32 Ln: 9 - 13

Annotation:

32: 9 A. So I think, yes, the map is
 10 constitutional because it went through the process.
 11 Determinations were made. Lines were drawn. It
 12 was submitted to our office, we received it, and we
 13 processed it.

Pg: 33 Ln: 4 - 9

Annotation:

33: 4 Q. And you've said that a couple times.
 5 Is that the only requirement, then, is that what
 6 you're telling me? The only requirement is that it
 7 apportions the state and has 34 districts?
 8 MR. LEWIS: I'll object that it calls
 9 for legal conclusion.

Pg: 33 Ln: 10 - 13

Annotation:

33:10 THE WITNESS: For the purposes of our
 11 office's redistricting and the requirements that we

TextMap Annotation Digest Report

Case Name: FairMaps_Redistricting_3520305-0003

Transcript: [5/10/2023] Clark, Scott 2023.05.10

Pg: 33 Ln: 10 - 13 continued...

Annotation:

33:12 have as the Secretary of State, we need 34
13 districts.

Pg: 34 Ln: 24 - Pg: 36 Ln: 6

Annotation:

34:24 Q. And what's that answer?

25 A. We received a map as constitutionally

35:1 required.

2 Q. So my question is, when this map

3 divides Buchanan County and Hazelwood, is it the

4 Secretary's position that that was necessary to

5 comply with some other requirement of the

6 Constitution, yes or no?

7 A. I don't have an answer for this.

8 Q. Okay. All right. And you're here

9 speaking on behalf of the Missouri Secretary of

10 State, correct?

11 A. That is correct.

12 Q. And you're here speaking on behalf of

13 the topic listed in Exhibit 1, correct?

14 A. That is correct.

15 Q. All right. So you don't know -- or

16 the Secretary of State doesn't know whether it was

17 necessary to divide Buchanan County in order to

18 comply with the Constitution's compactonist

19 requirements, right?

20 A. I think that is a question that would

21 be best answered by the expert witness.

22 Q. You may be right about that. What's

23 your answer?

24 A. I do not know the factors that were

25 discussed or talked about by the Judicial

36:1 Redistricting Commission. I have no knowledge of

2 that information, of what went into their

3 decision-making factor. What I do know is they

4 provided a map. The map was sufficient for what

5 our office needed to redistrict voters under the

6 apportionment plan

Pg: 37 Ln: 2 - 22

Annotation:

37: 2 Is it the Secretary of State's position that it was
3 necessary to divide Hazelwood in order to comply
4 with the nearly equal as practicable population
5 requirement?

6 A. I think the map speaks for itself.

7 Q. What does it say?

8 A. It says that a determination had to

9 be made and a line had to be drawn, and that is

TextMap Annotation Digest Report

Case Name: FairMaps_Redistricting_3520305-0003

Transcript: [5/10/2023] Clark, Scott 2023.05.10

Pg: 37 Ln: 2 - 22 continued...

Annotation:

37:10 where the line landed.

11 Q. So yes or no?

12 A. I think holistically, if you look at
13 the map, in drawing lines, whether you're splitting
14 Buchanan County or the city of Hazelwood,

15 eventually lines have to be drawn. So the map that
16 was presented to us, was presented from the

17 Judicial Commission, is a valid map because it was
18 filed under the Constitution.

19 Q. Okay. And I get you. Any other

20 reason on behalf of the Secretary of State that

21 it's valid other than it was filed with you?

22 A. No.

Pg: 39 Ln: 14 - Pg: 41 Ln: 16

Annotation:

39:14 Q. We had asked if Dave's Redistricting

15 was, quote, acceptable software to be used to draw

16 State Senate district maps, and the response from

17 the Secretary of State is, Defense admits only

18 insofar as Dave'sRedistricting.org is a software

19 program that can be used to draw State Senate

20 district maps if the user is qualified to use it

21 for that purpose and the data used is appropriate

22 for the task.

23 So my question to you is, how do you

24 become qualified to use Dave's Redistricting to

25 draw a map?

40: 1 A. I think you would have to know how

2 the tools are utilized for Dave's Redistricting.

3 You're going to have to have some limited knowledge

4 of web browser functionality. You're going to have

5 to have knowledge of, depending on your task,

6 right, of what your goal is to achieve.

7 Q. Right. So is the Secretary of State

8 aware of some certification that one could get on

9 Dave's Redistricting?

10 A. I do not believe so.

11 Q. So I guess what I'm trying to get at,

12 and maybe there's -- maybe this is just lawyer

13 words. This says, If the user of the program is

14 qualified to use it. I'm trying to understand

15 where the line is between an unqualified person and

16 a qualified person. Are you aware of some

17 particular thing that one could do to become

18 qualified?

19 MR. LEWIS: I'll object to the form

20 of the question.

21 THE WITNESS: I am not.

22 BY MR. HATFIELD:

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Case Name: FairMaps_Redistricting_3520305-0003

Transcript: [5/10/2023] Clark, Scott 2023.05.10

Pg: 39 Ln: 14 - Pg: 41 Ln: 16 continued...

Annotation:

40:23 Q. Okay. And the rest of it says, so
 24 qualified and the data used is appropriate for the
 25 task. What data would be appropriate for Dave's
 41: 1 Redistricting to use to draw Missouri State Senate
 2 maps?
 3 A. So I think in any map drawing you
 4 necessitate having population, so census
 5 population. You would have to have an
 6 understanding of the layers that go into the census
 7 block as well as precinct lines, jurisdictional
 8 lines in -- you would have to have that information
 9 in order to draw districts. Right? So Dave's
 10 Redistricting has to have a certain amount of data
 11 behind it in order to perform the task of any
 12 redistricting.
 13 Q. Does it?
 14 A. I -- I think that Dave's
 15 Redistricting does have a sufficient amount of
 16 information to be able to draw lines.

Pg: 41 Ln: 25 - Pg: 42 Ln: 16

Annotation:

41:25 Q. Does the Secretary of State have a
 42: 1 position on what the proper way to analyze
 2 compactness is?
 3 A. So compactness analysis would not be
 4 a function of the Secretary of State's Office.
 5 Q. Right. Regardless, do you have a
 6 position? I mean -- let me back up.
 7 As I understand it, there might be
 8 different ways to analyze compactness. Do you
 9 agree? Do you know?
 10 A. Yes, there could be different ways.
 11 Q. And so I'm just trying to make sure I
 12 understand. Even though I know it's not your
 13 function, does the Secretary of State have a
 14 position on how one would analyze the compactness
 15 of a State Senate district?
 16 A. I do not know.

Pg: 44 Ln: 1 - 10

Annotation:

44: 1 Q. Okay. So make sure I understand.
 2 Sitting here today in this deposition, the
 3 Secretary of State does not have a position -- tell
 4 me if I'm wrong -- does not have a position on
 5 whether it was possible to draw a constitutionally
 6 compliant map that did not split Buchanan County?
 7 A. An expert witness may -- on the data

TextMap Annotation Digest Report

Case Name: FairMaps_Redistricting_3520305-0003

Transcript: [5/10/2023] Clark, Scott 2023.05.10

Pg: 44 Ln: 1 - 10 continued...

Annotation:

44: 8 may say differently. I think the map speaks for
9 itself, that it's a constitutional map that was
10 presented to us.

Pg: 44 Ln: 14 - 24

Annotation:

44:14 Q. Okay. Sitting here today, testifying
15 on behalf of the Secretary of State, would it have
16 been possible to draw State Senate maps that
17 otherwise complied with the Constitution but did
18 not split the municipality of Hazelwood?
19 A. The map that was presented to us
20 speaks for itself. It was properly filed. It is
21 constitutional as far as it was filed with our
22 office. I think any other considerations perhaps
23 an expert witness might be able to answer. As far
24 as I know, it is a constitutional map.

Pg: 46 Ln: 15 - Pg: 47 Ln: 10

Annotation:

46:15 Q. Let me hand you what's marked as
16 Exhibit 4. So this is -- in the lower right-hand
17 corner it says Redistricting, bunch of zeros and
18 46. So I'll just say for the record, this is from
19 the OA website that the Secretary of State referred
20 us to. This is a document that at the top says
21 Senate Commission WP-Ellinger-1, 12/20/2021. In
22 the context of redistricting, have you heard the
23 name Ellinger, or Ellinger as some say?

24 A. Yes.

25 Q. And do you know who Ellinger is?

47:1 A. I believe Mr. Ellinger was the chair
2 of the Senate Redistricting Commission.

3 Q. He was -- do you know, he was one of
4 the Republican appointees?

5 A. I believe that's correct.

6 Q. To describe loosely. And so looking
7 at this, can you tell what this document is?

8 A. It would appear to be a working

9 document from the Senate Redistricting Commission
10 if I'm just facially reading what's there.

Pg: 48 Ln: 2 - Pg: 50 Ln: 5

Annotation:

48: 2 Q. All right. Well, so -- I mean, this
3 is probably obvious, but looking at this map, would
4 you agree that Buchanan County is not split between
5 two State Senate districts?

TextMap Annotation Digest Report

Case Name: FairMaps_Redistricting_3520305-0003

Transcript: [5/10/2023] Clark, Scott 2023.05.10

Pg: 48 Ln: 2 - Pg: 50 Ln: 5 continued...

Annotation:

48: 6 A. That is correct.
7 Q. It's all in District 21?
8 A. That is correct.
9 Q. Let me hand you what's been marked as
10 Exhibit 5. Similarly, this at the bottom says
11 Redistricting, bunch of zeros and 53. And
12 similarly, I don't remember exactly what you said,
13 but do we generally agree that this appears to be
14 some sort of Citizens Commission document?
15 A. It is a work product, yes.
16 Q. There you go. This one says
17 Ellinger-2 at the top. And so actually maybe you
18 just got -- said what I needed you to say, which is
19 this appears to be some sort of work product
20 document of the Citizens Commission, right?
21 A. Yes.
22 Q. And Ellinger-2 also keeps all of
23 Buchanan County in one State Senate district,
24 right?
25 A. It appears that way, yes.
49: 1 Q. And when it comes to citizens
2 redistricting work, are you familiar with the name
3 Montee?
4 A. I am, yes.
5 Q. And who is Montee?
6 A. Former State Auditor and the vice
7 chair, I believe, of the redistricting commission
8 for the Senate bipartisan.
9 Q. And Ms. Montee was one of the
10 Democrat appointees?
11 A. Correct.
12 Q. Yeah. And as I understand it, sort
13 of Ellinger was the head of the Republicans and
14 Montee was the head of the Democrats. Is that your
15 understanding?
16 A. I believe that they both represented
17 political parties, and he was the chair and she was
18 the vice chair.
19 Q. There you go. That's what I was
20 looking for. She was the vice chair?
21 A. She was the vice chair.
22 Q. All right. And so this is Montee 1.
23 And tell me again, the fact that it's labeled
24 Montee 1, what does that tell you about it?
25 A. That it is a work product probably
50: 1 created by her, at least attributed to her.
2 Q. Got you. And Montee 1 again does not
3 divide Buchanan County between Senate districts,
4 correct?
5 A. Correct.

TextMap Annotation Digest Report

Case Name: FairMaps_Redistricting_3520305-0003

Transcript: [5/10/2023] Clark, Scott 2023.05.10

Pg: 73 Ln: 20 - 25

Annotation:

73:20 THE WITNESS: The map is legal
21 because it was filed with our office. It was
22 constitutionally produced under the Judicial
23 Commission's role and duty. Our duty was to
24 receive the plan and implement the plan as
25 presented.

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**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
19TH JUDICIAL CIRCUIT**

CLARA FAATZ, *et al.*,
Plaintiffs,
v.
JOHN R. ASHCROFT, in his official
capacity as Missouri Secretary of State,
Defendant.

Case No. 22AC-CC03185

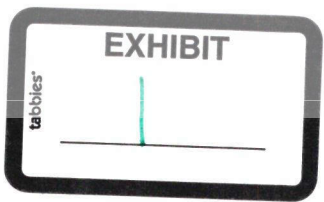
**AMENDED NOTICE OF DEPOSITION OF CORPORATE DESIGNEE FOR
THE OFFICE OF THE SECRETARY OF STATE**

TO: Counsel of Record

Plaintiffs Clara Faatz and William Caldwell hereby give notice that their attorneys will take the deposition of the Rule 57.03(b)(4) representative(s) for Defendant Missouri Secretary of State. The deposition will take place on May 10, 2023 at 10:00 am at Stinson LLP, 230 West McCarty Street, Jefferson City, MO 65101.

Matters Upon Which the Deponent(s) Will be Examined

1. The basis for the Secretary of State's assertion in response to interrogatories in this case that the New Senate Map "complies with all of the factors contained in Article III, §§ 3 and 7 of the Missouri Constitution." See Secretary of State John R. Ashcroft's Answers to Plaintiffs' First Set of Interrogatories.
2. The Secretary of State's position on whether Plaintiffs' map (attached as Exhibit B to the Petition) complies, or not, with all of the factors contained in Article III, §§ 3 and 7 of the Missouri Constitution.
3. Any communications the Secretary of State has had with any individual or organization pertaining to the redistricting process, including but not limited to any experts retained or consulted in this case.
4. Any communications with the State Demographer.



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CERTIFICATE OF SERVICE

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I hereby certify that on May 3, 2023, I electronically filed the foregoing with the Clerk of the Court using the Court's eFiling system which sent notification of such filing to the counsel of record.

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/s/ Charles W. Hatfield

an Official Court Document Not an Official Court Document Attorney for Plaintiffs Not an Official Court Document

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Senate Commission WP – Ellinger 1 – 12.20.2021

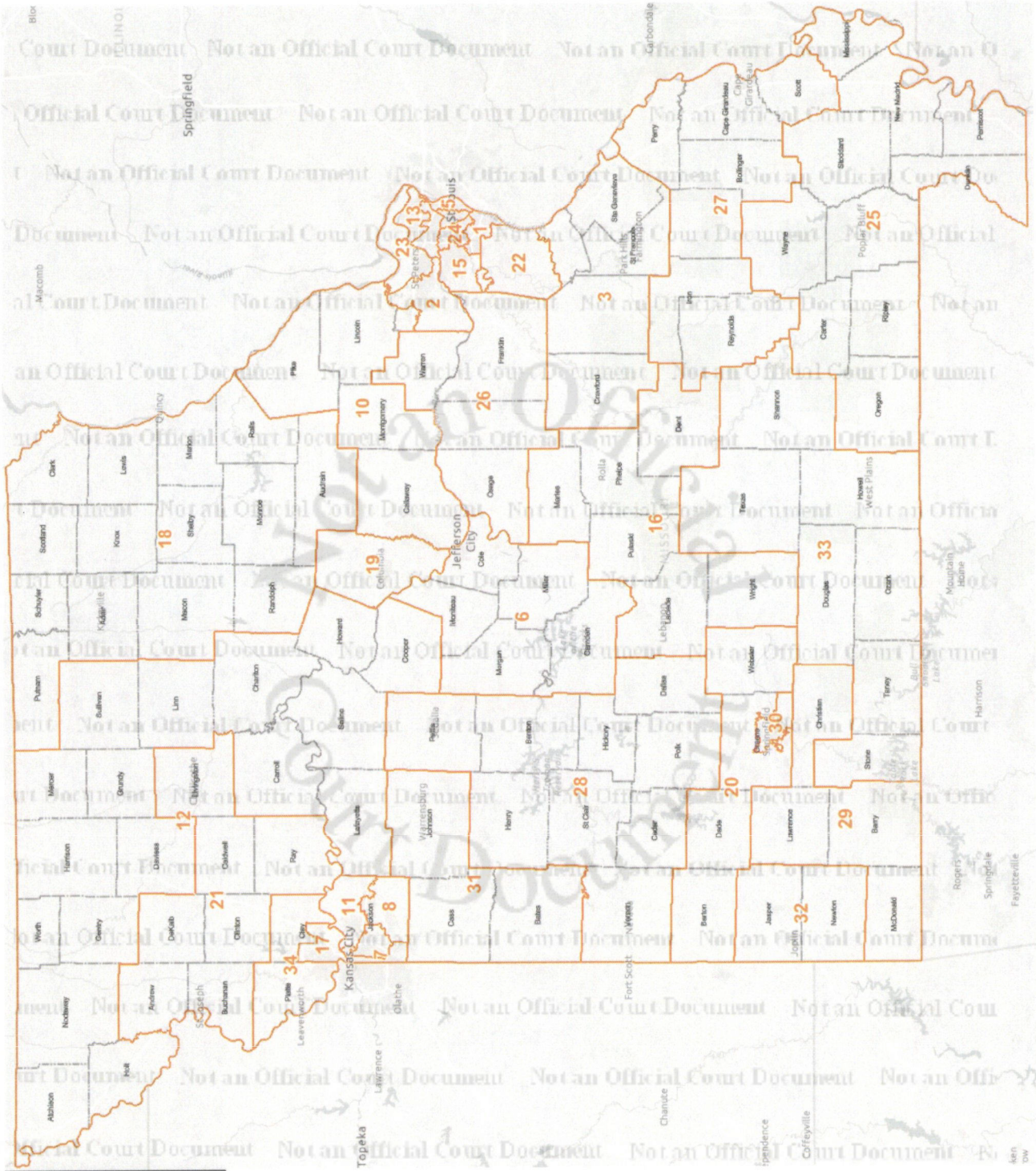
Senate Commission Work Product

Ellinger 1 - 12/20/2021



Reference Layers

Missouri Counties



EXHIBIT

4

tabbles

Senate Commission WP – Ellinger 2 – 12.22.2021

Senate Commission Work Product

Ellinger 2 - 12/22/2021

Reference Layers
Missouri Counties

