

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

ALABAMA LEGISLATIVE BLACK	*
CAUCUS; BOBBY SINGLETON; ALABAMA	*
ASSOCIATION OF BLACK COUNTY	*
OFFICIALS; FRED ARMSTEAD, GEORGE	*
BOWMAN, RHONDEL RHONE, ALBERT F.	*
TURNER, JR., and JILES WILLIAMS, JR.,	*
individually and on behalf of others similarly	*
situated,	*
	*
Plaintiffs,	* Civil Action No.
	* 2:12-CV-691-WKW-WC
v.	* (3-judge court)
	*
THE STATE OF ALABAMA; BETH	*
CHAPMAN, in her official capacity as Alabama	*
Secretary of State,	*
	*
Defendants.	*

**PLAINTIFFS' REPLY BRIEF SUPPORTING
MOTION FOR PARTIAL SUMMARY JUDGMENT
AND FOR PRELIMINARY AND PERMANENT INJUNCTION**

Plaintiffs Alabama Legislative Black Caucus et al., through undersigned counsel, respectfully submit this reply to defendants brief, Doc. 30, in opposition to plaintiffs' motion, Doc. 7, for partial summary judgment with respect to Count I of their complaint, Doc. 1 and Doc. 3-1. Pursuant to this Court's order of October

10, 2012, Doc. 27, this reply brief addresses only defendants' response to plaintiffs' motion for partial summary judgment and for preliminary and permanent injunctions. By this Court's order entered October 30, 2012, Doc. 31, a response to defendants' motion for judgment on the pleadings, Doc. 29, is not due until November 14.

This reply to defendants' opposition to plaintiffs' motion for partial summary judgment will show that there is no doubt that Alabama's Constitution prohibits dividing counties in either House or Senate districts, that plaintiffs' motion presents a question of federal law that has long been settled, and that the enacted House and Senate redistricting plans violate federal law by failing to minimize splitting county boundaries except to the extent necessary to comply with the Fourteenth Amendment requirement of equal population and with the Voting Rights Act. This reply supplements the authorities and arguments set out in plaintiffs' brief supporting partial summary judgment, Doc. 8, plaintiffs' opposition to defendants' motion to dismiss or stay, Doc. 15, and plaintiffs' surreply to defendants' motion to dismiss or stay, Doc. 23.

**THE ALABAMA CONSTITUTION PROHIBITS SPLITTING
COUNTIES IN BOTH HOUSE AND SENATE DISTRICTS.**

The plain language of §§ 198 and 199 of the 1901 Constitution of Alabama

requires 105 House districts to be apportioned among the 67 counties, without splitting any county or combining two or more counties in one district.

The house of representatives shall consist of not more than one hundred and five members, unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the house of representatives shall be apportioned by the legislature among the several counties of the state, according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States, which apportionment, when made, shall not be subject to alteration until the next session of the legislature after the next decennial census of the United States shall have been taken.

Ala. Const. § 198.

It shall be the duty of the legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of representatives and apportion them among the several counties of the state, according to the number of inhabitants in them, respectively; provided, that each county shall be entitled to at least one representative.

Ala. Const. § 199. What this means is made clear in the 1901 Constitution itself:

Initial apportionment of house of representatives.

Until the legislature shall make an apportionment of representatives among the several counties, as provided in the preceding section, the counties of Autauga, Baldwin, Bibb, Blount, Cherokee, Chilton, Choctaw, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Lamar, Lawrence, Limestone, Macon, Marion, Marshall, Monroe, Pickens, Randolph, St. Clair, Shelby, Washington, and Winston, shall each have one representative; the counties of Barbour, Bullock, Butler, Calhoun, Chambers, Clarke, Elmore, Etowah, Hale, Henry, Jackson, Lauderdale, Lee, Lowndes,

Madison, Marengo, Morgan, Perry, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Wilcox, shall each have two representatives; the counties of Dallas and Mobile shall each have three representatives; the county of Montgomery shall have four representatives; and the county of Jefferson shall have seven representatives.

Ala. Const. § 202.

The § 202 apportionment of House seats among the counties remained unchanged until 1962. *Sims v. Frink*, 208 F.Supp. 431, 436-37, 441 (M.D. Ala. 1962) (3-judge court), aff'd sub nom. *Reynolds v. Sims*, 377 U.S. 533 (1964). No counties were split until this Court ordered single-member districts to be used for the first time in the 1974 House and Senate elections. *Sims v. Amos*, 336 F. Supp. 924 (M.D. Ala.), aff'd, 409 U.S. 942 (1972). The same “whole county”¹ apportionment of House seats has been in every Alabama Constitution since the state was founded in 1819. See Appendix A.

It cannot be disputed that no county was split among House districts in Alabama from 1819 to 1974. The defendants are plainly wrong when they argue that “the degree to which the Alabama Constitution addresses the splitting of counties in House plans is an unsettled question of state law...” Doc. 30 at 31 n.11. The constitutional provisions governing apportionment of House districts

¹ *Sims v. Baggett*, 247 F.Supp. 96, 103 (M.D. Ala. 1965) (3-judge court) (quoting Resolution of the Alabama Legislature, August 13, 1965).

have not explicitly referred to splitting counties because there have always been more House districts than there are counties to which they are apportioned, and each county is entitled to one representative.

In contrast, there have always been more counties than Senate seats. So the whole-county language for Senate districts prohibits dividing counties:

It shall be the duty of the legislature at its first session after taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of senators, and to divide the state into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more; and such districts, when formed, shall not be changed until the next apportioning session of the legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the legislature may be attached to senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other.

Ala. Const. § 200. The initial apportionment of Senate seats is set out in § 203 of the 1901 Constitution, and it remained unchanged until 1962. *Sims v. Frink*, 208 F.Supp. at 442. The same whole-county apportionment of Senate seats has been in every Alabama Constitution since the state was founded in 1819. See Appendix A.

Maps of the whole-county districts from which members of the Alabama House and Senate were elected from 1819 to 1962 can be viewed on the web site of the Alabama Archives.

http://www.archives.alabama.gov/legislat/ala_maps/getstart.html. Maps of the House and Senate districts ordered by this Court in *Sims v. Baggett*, 247 F.Supp. 96, 103 (M.D. Ala. 1965) (3-judge court), are in Appendix B to this brief.²

THE EXTENT TO WHICH THE FOURTEENTH AMENDMENT AND THE VOTING RIGHTS ACT PREVENT ENFORCEMENT OF THE STATE'S CONSTITUTIONAL WHOLE-COUNTY PROVISIONS IS A SETTLED QUESTION OF FEDERAL LAW.

There is no question about the meaning of the whole-county provisions in the Alabama Constitution, nor is there any doubt that §§ 198-200 are mandatory constraints on the Alabama Legislature, which the Legislature may not lawfully modify or ignore. E.g., *Opinion of the Justices*, 263 Ala. 158, 81 So.2d 881 (1950) (cited in *Sims v. Frink*, 208 F.Supp. at 434). Under the Supremacy Clause of the U.S. Constitution, only the requirements of the Equal Protection Clause of the Fourteenth Amendment and the Voting Rights Act can lawfully prevent the full

² These maps are part of Plaintiffs' Exhibit 167 admitted in evidence in *Lynch v. Alabama*, CA No. CV-08-S-0450-NE (N.D. Ala.). PX 167 was taken from the archives of the Alabama Farm Bureau Federation maintained by Auburn University. Note that the House plan apportions two seats to Macon, Bullock, and Barbour Counties. This was the majority-black district that in 1970 elected Fred Gray and Thomas Reed as the first two African-American members of the Alabama Legislature since Reconstruction. But the first election under this apportionment plan was held in 1966 and resulted in a federal lawsuit filed by Mr. Gray alleging that white election officials stole the election. Judge Pittman ordered the election officials to implement a long list of reforms, but he declined to order a new election. *Gray v. Main*, 309 F.Supp. 207 (M.D. Ala. 1968).

enforcement of those state constitutional mandates. The extent to which the Constitution and laws of the United States require modification of §§ 198-200 of the Alabama Constitution is a question of federal law, not state law. State courts, of course, may enforce federal law. But this Court has already ruled on how the state constitutional whole-county provisions must be reconciled with these federal constitutional and statutory requirements. See plaintiffs' surreply to defendants' motion to dismiss or stay, Doc. 23, at 2-5 (citing *Sims v. Baggett*, 247 F. Supp. 96, 100-01 (1965) (3-judge court); *Sims v. Amos*, 336 F. Supp. 924 (M.D. Ala.) (3-judge court), aff'd, 409 U.S. 942 (1972); *Burton v. Hobbie*, 561 F.Supp. 1029, 1031 (1983) (3-judge court)).

The defendants wrongly contend that this is a question of state law, and that the Alabama Legislature "is free to use the decisions of the federal courts as guidance and give those decisions, which relate to other plans and circumstances, the weight it believes appropriate just like the state courts would do. It does not, however, have to follow those federal court decisions." Doc. 30 at 33. Of course, the Alabama Legislature has no authority to repeal or disregard §§ 198-200 of the Alabama Constitution. E.g., *Grantham v. Denke*, 359 So.2d 785, 787 (Ala. 1978) ("The constitution of this state is the supreme law and limits the power of the legislature); accord, *Ellis v. West ex rel. West*, 971 So.2d 20, 22 (Ala. 2007) ("The

authority to declare public policy is reserved to the Legislature, subject to limits imposed by the Constitution.”) (citations omitted). As a matter of federal law, the whole-county restrictions on the power of the Legislature to redraw its House and Senate districts “remain[] operative” and may be disregarded only where their application “brings about an unavoidable conflict” with federal law. *Sims v. Baggett*, 247 F.Supp. At 100-01; accord, *Sims v. Amos*, 336 F. Supp. 924, 939 (M.D. Ala.) (3-judge court), aff’d, 409 U.S. 942 (1972) (“[b]oundary lines are sacrificed only where **absolutely necessary** to satisfy the constitutional requirement of one man one vote.” (bold emphasis added)).

The defendants’ brief acknowledges the Legislature understood that this question is settled:

The Guidelines state:

The following redistricting policies contained in the Alabama Constitution shall be observed to the extent that they do not violate or conflict with requirements prescribed by the Constitution and laws of the United States:

- a. Each House and Senate district should be composed of as few counties as possible.

Doc. 30 at 11 (quoting the May 2011 Reapportionment Committee Guidelines, Doc. 30-4 at 3). But defendants contend that the Legislature “does not, however, have to follow those federal court decisions.” Doc. 30 at 33. This remarkable contention is flatly wrong. Only federal law authorizes the Legislature to split

even a single county between House and Senate districts, and the Supremacy Clause requires all branches of state government to comply with this Court's determination of the extent to which the Equal Protection Clause and the Voting Rights Act can justify deviation from the whole-county mandates of the Alabama Constitution.

Defendants' reliance in this case on *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89 (1984), stands on their heads the "principles of federalism that inform Eleventh Amendment doctrine." 465 U.S. at 100 (quoting *Hutto v. Finney*, 437 U.S. 678, 691 (1978)). *Pennhurst* held that a federal court injunction entered solely on the basis of a claim that state officials were "failing to carry out their duties under State statutes" was barred by the Eleventh Amendment. 465 U.S. at 109. Specifically, the Court held "that suit may not be predicated on violations of state statutes that command purely discretionary duties . . . [which] gave petitioners broad discretion in operating Pennhurst. . . ." *Id.* at 110. The Court remanded the case for consideration of "to what extent, if any, the judgment may be sustained" based on "the Eighth and Fourteenth Amendments and § 504 of the Rehabilitation Act of 1973." *Id.* at 125.

In the instant action, the defendants aren't complaining that this Court's prior whole-county rulings constitute federal interference **solely** with state

officials' **discretionary** interpretation of how to carry out their duties under a state **statute**. To the contrary, they are contending that these federal court decisions enforcing **federal** constitutional and statutory law have relieved them of any duty to comply with state **constitutional** mandates that **prohibit** the exercise of legislative discretion to divide counties among House and Senate districts. Defendants' position seeks to establish a principle of **reverse** federalism, asking this Court to hold that a federal court has the authority to enforce federal law in a way that effectively repeals the state constitutional provisions that have limited the Legislature's power for nearly two centuries. It is the defendants, not the plaintiffs, who are asking this Court to violate the State of Alabama's sovereignty and the Eleventh Amendment.

THE DEFENDANTS' ALLEGED REASONS FOR DISREGARDING COUNTY BOUNDARIES CANNOT BE JUSTIFIED AS UNAVOIDABLE CONFLICTS WITH FEDERAL LAW.

Defendants advance three federal law reasons they contend justify the number of splits of county boundaries in the House and Senate plans that is so excessive it amounts to total disregard of the state constitutional whole-county provisions:

First, while acknowledging the Supreme Court rule that $\pm 5\%$ deviations constitute prima facie compliance with population equality under the Equal

Protection Clause, defendants contend that “nothing stops the Legislature from using a tighter overall population deviation.” Doc. 30 at 34. This argument essentially asserts that the Legislature is free to ignore the prior holdings of this Court that state constitutional restrictions on its power to gerrymander must be complied with unless a conflict with federal law is unavoidable. The greater leeway the Supreme Court has afforded states when redrawing their legislative districts has been provided precisely to protect the legitimate state interest in preserving political subdivisions. *Sims v. Baggett*, 247 F.Supp. at 100 (citing *Reynolds v. Sims*, 377 U.S. 533 (1964)). Defendants may not justify the hash that Acts 2012-602 and 2012-603 make of county boundaries by contending that the federal constitutional rule of population equality has provided it a free hand to violate §§ 198-200 of the Alabama Constitution.³

Second, they contend that the federal court decision in *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004), aff'd, 542 U.S. 947 (2004), justifies the

³ Defendants argue: “If zero deviation plans are virtually required for congressional representation (and county lines are sacrificed to the demand for population equality), tightening the allowable population deviation in a legislative plan should not be seen to violate one-person, one-vote standards.” Doc. 30 at 35. It is true that much smaller population deviations are required in Congressional redistricting plans. But a month ago the Supreme Court reaffirmed the principle that protecting county boundaries can justify more than *de minimus* deviations even in Congressional plans. *Tennant v. Jefferson County Comm’n*, 81 USLW 3136 (Sept. 25, 2012) at *4.

Legislature's arbitrary rule rejecting any proposed House and Senate plans that contain more than a $\pm 1\%$ deviation. Doc. 30 at 36-37. But $\pm 1\%$ is no more a safe harbor than is $\pm 5\%$, and it cannot insulate the Legislature from claims that its plans are arbitrary and discriminatory. 300 F. Supp. 2d at 1340-41. Defendants do not – and cannot – contend that the $\pm 1\%$ restriction is necessary to prevent an **unavoidable** conflict with federal constitutional law. To the contrary, it violates federal constitutional principles. As we stated in the complaint, the restriction of permissible deviations to $\pm 1\%$ in Acts 2012-602 and 2012-603 is an arbitrary and discriminatory manipulation of population deviations that “violate[s] the fundamental one person, one vote command of *Reynolds*, requiring that states ‘make an honest and good faith effort to construct districts ... as nearly of equal population as practicable’ and deviate from this principle only where ‘divergences ... are based on legitimate considerations incident to the effectuation of a rational state policy.’” *Larios*, 300 F. Supp. 2d at 1341 (quoting 377 U.S. at 577).

Third, defendants contend that additional county splits were made necessary because “[t]he State also needed to maintain the relative strength in the minority population in each of those [majority-black] districts in order to comply with Section 5.” Doc. 30 at 39. This is incorrect. Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, only requires that, with respect to existing majority-black

districts, the state avoid retrogression in the number of districts in which members of the protected minority have the ability to elect candidates of their choice.

Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or [membership in a language minority group], to elect their preferred candidates of choice denies or abridges the right to vote....

42 U.S.C. § 1973c(b).

“[A] simple voting-age population analysis cannot accurately measure minorities’ ability to elect,” nor can “examining only the number of majority-minority districts.” *Texas v. United States*, 831 F.Supp.2d 244, 260 (D. D.C. 2011) (3-judge court). Section 5 does not require maintaining the high percentages of black voting age populations that frequently appear when the new census data are applied to the old, usually under-populated majority-black districts. Nor does § 5 require guaranteeing the ability to elect, as defendants suggest, by drawing districts with 65% black voting-age majorities. Doc. 30 at 40.⁴

⁴ Indeed, only 8 of the 27 House districts and 2 of the 8 Senate districts in the Legislature’s plans have black voting-age majorities above 65%. Doc. 30-6 at 5, Doc. 30-7 at 4. The State even created a 28th House district with a 50.08% **total** black population majority, although HD 85, at 47.863%, does not have a black voting-age majority. Doc. 30-6 at 5. Plaintiffs agree that HD 85 likely will perform as a black “ability-to-elect” district, and it demonstrates that the Legislature realized that maintaining the very high percentages in the majority-black districts is not essential to maintaining black voters’ ability to elect a

Determining where and how the ability to elect is present is a careful inquiry. This Court finds that the simple voting-age population statistics used by Texas are insufficient, and we cannot be confident that Texas has properly identified existing ability districts in its benchmark or future ability districts under the proposed Plans. Therefore, this Court can neither count the former nor compare them to the latter. There are no easy shortcuts in this inquiry.

Texas v. United States, 831 F.Supp.2d at 262. The three-judge district court’s opinion in *Texas v. United States*, the first decision to examine the substantive requirements of § 5 as amended and extended by Congress in 2006, goes on to “outline the types of factors that are relevant for this analysis.” *Id.*

Although the Supreme Court has never outlined all factors relevant to this inquiry, it has emphasized that retrogression analysis “is often complex in practice to determine.” *Georgia v. Ashcroft*, 539 U.S. [461,] 480 [(2003)]. We conclude that the type of factors relevant to this complex inquiry may include the number of registered minority voters in redrawn districts; population shifts between or among redrawn districts that diminish or enhance the ability of a significant, organized group of minority voters to elect their candidate of choice; an assessment of voter turnout in a proposed district; to the extent discernible, consideration of future election patterns with respect to a minority preferred candidate; and new ability districts that would offset any lost ability district.

Texas v. United States, 831 F.Supp.2d at 264-65.

The defendants suggest that (unnecessarily) maintaining the high black percentages in the existing majority-black districts “presented some challenges”

candidate of their choice.

that justified splitting more county boundaries. Doc. 30 at 40. But the plans sponsored by members of the Alabama Legislative Black Caucus, HB 16 and SB 5, demonstrated how the number of county splits can be drastically reduced while still maintaining 27 House districts and 8 Senate districts with black voting-age majorities. Doc. 3-1, Exhs. F-J. On their faces, the plans enacted in Acts 2012-602 and 2012-603 cannot be justified on grounds that an unavoidable conflict with the Voting Rights Act requires splitting so many counties that 49 of Alabama's 67 counties will have one or more members of their local legislative delegations than are necessary based on their populations.

CONCLUSION

The facial challenge to Acts 2012-602 and 2012-603 presented by plaintiffs' motion for partial summary judgment should be decided before addressing the remaining counts in the complaint and the defendants' defenses to them. If the Legislature's enacted plans violate the one-person, one-vote rule by ignoring the whole-county restrictions in the Alabama Constitution, this Court must order the Legislature to draft new plans that split county boundaries only where conflicts with the one-person, one-vote rule and the Voting Rights Act are unavoidable. Whether plaintiffs will have grounds for challenging new, whole-county statutory plans is uncertain. This Court would be required to order in effect its own plans

only if the Legislature failed to act.

The plaintiff African-American legislators and county commissioners recognize that the Republican majorities will enact House and Senate redistricting plans that attempt to maximize their partisan interests. As racial and partisan minorities, plaintiffs believe that the whole-county restrictions in the Alabama Constitution may offer their best and last hope of protecting their constituents from extreme partisan gerrymandering. And preserving county boundaries will provide local county officials heightened influence with their local legislative delegations, influence that may ameliorate to some extent state constitutional restrictions on home rule. The crazy-quilt districts on display in Acts 2012-602 and 2012-603 show the chaotic direction in which unrestrained gerrymandering is headed. By granting the injunction plaintiffs request, this Court could restore now and for the future the modicum of order and fairness that were the objectives of its whole-county rulings when federal courts first entered the political thicket of redistricting.

Respectfully submitted this 2nd day of November, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2012, I served the foregoing on the following electronically by means of the Court's CM/ECF system:

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APPENDIX A

House of Representatives:

SEC. 9. The General Assembly shall, at their first meeting and in the years one thousand eight hundred and twenty, one thousand eight hundred and twenty-three, one thousand eight hundred and twenty-six, and every six years thereafter, cause an enumeration to be made of all the inhabitants of the State, and the whole number of the representatives shall, at the first session held, after making every such enumeration, be fixed by the General Assembly, and apportioned among the several counties, cities, or towns, entitled to separate representation, according to their respective numbers of white inhabitants; and the said apportionment, when made, shall not be subject to alteration, until after the next census shall be taken. The House of Representatives shall not consist of less than forty-four, nor more than sixty members, until the number of white inhabitants shall be one hundred thousand, and, after that event, the whole number of representatives shall never be less than sixty nor more than one hundred; Provided, however, that each county shall be entitled to at least one representative.

1819 Constitution of Alabama, Art. III, § 9. See <http://www.legislature.state.al.us/misc/history/constitutions/1819/1819.html>.

Section 9. The General Assembly shall cause an enumeration to be made in the year eighteen hundred and fifty, and eighteen hundred and fifty-five, and every ten years thereafter, of all the white inhabitants of this State; and the whole number of representatives shall, at the first regular session after such enumeration, be apportioned among the several counties, cities, or towns, entitled to separate representation, according to their respective number of white inhabitants, and the said apportionment, when made, shall not be subject to alteration until after the next census shall be taken.

1861 Constitution of Alabama, Art. III, § 9. See

<http://www.legislature.state.al.us/misc/history/constitutions/1861/1861.html>.

Section 6. The house of representatives shall consist of not more than one hundred members, who shall be apportioned by the General Assembly among the several counties of the State according to the number of white inhabitants in them respectively ; and, to this end, the General Assembly shall cause an enumeration of all the inhabitants of the State to be made in the year one thousand eight hundred and sixty-six, and again in the year one thousand eight hundred and seventy-five, and every ten years thereafter, and shall make an apportionment of the representatives among the several counties at the first regular session after each enumeration ; which apportionment, when made, shall not be subjected to alteration, until after the next census shall have been taken, Provided, that each county shall be entitled to at least one representative. Provided further, that where two or more adjoining counties shall each have a residuum or fraction over and above the ratio then fixed by law, which fractions, when added together, equal or exceed that ratio, in that case, the county having the largest fraction shall be entitled to one additional representative.

1865 Constitution of Alabama, Art. IV, § 6. See <http://www.legislature.state.al.us/misc/history/constitutions/1865/1865.html>.

Section 1. The House of Representatives shall consist of not more than one hundred members, who shall be apportioned by the General Assembly among the several counties of the State, according to the number of inhabitants in them respectively; and to this end the General Assembly shall cause an enumeration of all the inhabitants of the State to be made in the year 1875, and every ten years thereafter, and shall make an apportionment of the representatives among the several counties at the first regular session after each enumeration; which apportionment, when made, shall not be subject to alteration until after the next census shall have been taken: Provided, That each county shall be entitled to at least one representative, And provided, further, That when two or more adjoining counties shall each have a residuum, or fraction over and above the ratio then fixed by law,

which fractions, when added together, equal, or exceed that ratio, in that case the county having the largest fraction shall be entitled to one additional representative.

1868 Constitution of Alabama, Art. VIII, § 1. See <http://www.legislature.state.al.us/misc/history/constitutions/1868/1868.html>.

Sec. 2. The house of representatives shall consist of not more than one hundred members, who shall be apportioned by the general assembly among the several counties of the state, according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States for the year eighteen hundred and eighty; which apportionment, when made, shall not be subject to alteration until the first session of the general assembly after the next decennial census of the United States shall have been taken.

Sec. 3. It shall be the duty of the general assembly, at its first session after the taking of the decennial census of the United States in the year eighteen hundred and eighty, and after each subsequent decennial census, to fix by law the number of representatives, and apportion them among the several counties of the state; provided, that each county shall be entitled to at least one representative.

1875 Constitution of Alabama, Art. IX, §§ 2-3. See <http://www.legislature.state.al.us/misc/history/constitutions/1875/1875.html>.

Senate:

SEC. 10. The General Assembly shall, at the first session after making every such enumeration, fix by law the whole number of senators, and shall divide the state into the same number of districts, as nearly equal in the number of white inhabitants as may be, each of which districts shall be entitled to one senator and no more; provided that the whole number of senators shall never be less than one fourth, nor more than one third of the whole number of representatives.

SEC. 11. When a senatorial district shall be composed of two or more counties, the counties of which such district consists shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a district.

1819 Constitution of Alabama, Art. III, §§ 10-11. See <http://www.legislature.state.al.us/misc/history/constitutions/1819/1819.html>.

Section 7. The whole number of senators shall be not less than one fourth, nor more than one third, of the whole number of representatives ; and it shall be the duty of the General Assembly, at its first session after the making of each enumeration, as provided by the last preceding section, to fix by law the number of senators, and to divide the State into as many senatorial districts as there are senators ; which districts shall be as nearly equal to each other as may be in the number of white inhabitant, and each shall be entitled to one senator and no more. Provided, that, in the formation of said districts, no county shall be divided, and no two or more counties, which are separated entirely by a county belonging to another district, shall be joined into one district. And provided further, that the senatorial districts, when formed, shall not be changed until after the next census shall have been taken.

1865 Constitution of Alabama, Art. IV, § 7. See <http://www.legislature.state.al.us/misc/history/constitutions/1865/1865.html>.

Section 3. The whole number of Senators shall be not less than one-fourth or more than one-third of the whole number of representatives; and it shall be the duty of the General Assembly, at its first session after the making of each enumeration, as provided by section first, of this article, to fix by law the number of Senators, and to divide the State into as many senatorial districts as there are Senators; which districts shall be as nearly equal to each other as may be in the number of inhabitants, and each shall be entitled to one Senator, and no more: Provided, That no county shall be divided, and no two or more counties, which are separated entirely by a county belonging to another district, shall be joined in one district; And

Provided, further, That the senatorial districts, when formed, shall not be changed until after the next enumeration shall have been taken.

1868 Constitution of Alabama, Art. VIII, § 3. See <http://www.legislature.state.al.us/misc/history/constitutions/1868/1868.html>.

Sec. 4. It shall be the duty of the general assembly, at its first session after the taking of the decennial census of the United States in the year eighteen hundred and eighty, and after each subsequent decennial census, to fix by law the number of senators, and to divide the state into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more; and which districts, when formed, shall not be changed until the next apportioning session of the general assembly after the next decennial census of the United States shall have been taken. No county shall be divided between two districts, and no district shall be made of two or more counties not contiguous to each other.

1875 Constitution of Alabama, Art. IX, §§ 4. See <http://www.legislature.state.al.us/misc/history/constitutions/1875/1875.html>.

Plaintiffs' Exhibit 167

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

INDIA LYNCH, by her parent,
SHAWN KING LYNCH, et al.,

Plaintiffs,

v.

THE STATE OF ALABAMA, et al.,

Defendants.

Civil Action No. 5:08-cv-450

167. 4 A 1980 Box 9 Voter Registration Cover plus 10 pages 545 kb

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Auburn University Special Collections & Archives Department

Alabama Farm Bureau Federal Records, RG 543

Accession 1980

Box 9

File Voter Registration

POWER IN THE PEOPLE PROGRAM

OPERATION: REGISTRATION--CLASSIFICATION

- PURPOSE:**
- (1) To register all qualified voters within the Farm Bureau membership.
 - (2) To obtain vital information about members for county records and classification.

RESOLUTION ADOPTED BY THE
VOTING DELEGATES, ALABAMA FARM BUREAU FEDERATION

Never before has it been more important for rural people to actively participate in public affairs. Reapportionment of the State Legislature and other changes brought on by central government have jeopardized the future of not only rural but also all citizens. To protect and promote our interests we recommend the organization and initiation of an effective "Power in the People" program in Farm Bureau to activate our members in public affairs. Such a program should initially direct attention to registering all voters who share our common interests and objectives.

FORWARD

Today in Alabama an individual vote holds greater power than ever before. Alabama is presently undergoing some very significant changes in its political make-up. Federal court rulings on representation based on population alone and changes in voter qualifications have forced our state into a new era -- one in which Farm Bureau and the rural elements of the state are faced with a tremendous challenge to remain legislatively effective despite these changes. To continue to have a meaningful voice in the affairs of county, state, and national concern we need the voting power of all our members. The Voter-Registration Program in Alabama is therefore designed to help achieve this imperative goal.

I. Voter Registration Information

A. Voter Qualifications and Procedures

1. An applicant for registration must:

- a. Be a citizen of the United States.
- b. Be 21 years of age.
- c. Have lived in Alabama one year, your county six months, and your precinct (beat) three months.
- d. Take an oath to support the Constitution of the U. S. and that of the State of Alabama disallowing connection with any subversive group.

NOTE: **POLL TAX** - In order to vote one must also have paid poll taxes for the two years immediately preceding the election he wishes to vote.

This is no longer a requirement for national elections but for state elections this must be done by February 1, even if the prospective voter does not reach age or residence requirements until after this date.

Those exempt from poll tax are: blind, deaf, or permanently disabled persons; active members of the National Guard and former members with 21 years service; veterans with service prior to January 31, 1955; and persons of 45 years of age or older.

2. To register a person must appear in person before the Board of Registrars when in session and be notified by mail as to whether or not he has been registered.

B. Specific County Registration Information

1. Schedule of county registration days

- a. In most counties: The Board of Registrars will be in session at the courthouse the first and third Mondays of every month.

Due to approval of special meeting days by Gov. George C. Wallace all Boards in counties operating under general laws and in which federal examiners are **not** operating may meet as follows in 1966:

Jan. 3 thru 8	March 7 thru 9
Jan. 17 thru 21	March 14 thru 16
Feb. 7 thru 9	March 21 thru 23
Feb. 14 thru 19	March 28 thru 30
Feb. 21	April 4 thru 6
Feb. 28 thru March 2	April 18

- b. The Board of Registrars within a county will be able to give you the dates and place they will be in session.

Larger counties -- Jefferson, Mobile, Montgomery, Madison, Tuscaloosa, Etowah, Calhoun -- have additional days and places to register.

County Voter-Registration dates:

2. Availability of present registration list
 - a. Board of Registrars
 - b. Judge of Probate
3. Use of registration numbered book (to be explained at training session).

II. Procedure for Registration Campaign

A. Preliminary Work to be Done Before Campaign Begins

1. Obtain a Farm Bureau Membership List. This may be found at your county Farm Bureau office; if not, contact state office in Montgomery.

NOTE: Special information about members may be obtained from County Farm Bureau Insurance Records.

2. Have a map indicating rural routes and precincts.

- a. From the County Engineers office obtain three county highway maps preferably in large scale.
- b. One copy should be taken to the Judge of Probate's offices to have precinct (beats) drawn in. (Other two maps should be filled in later.)
- c. The map should then be taken to the Post Office to have the rural routes indicated on it. (Other two maps should be filled in also.)

NOTE: Of the three maps one each should be sent to the state and county office and one kept by committee chairmen to be used but turned in after campaign.

3. Separate Membership by Precinct (Beat)

- a. The committee should take the alphabetical membership list with addresses and using the map, relist the membership according to beat. Make two copies in case one is lost or damaged.

- b. Precinct (beat) lists for larger cities will need to be further divided into wards. A city map showing wards (information from the Probate Judge) may be helpful.

***4. Company Membership List with Voter Registration List**

- a. A voter registration list may be obtained from the Probate Judge's office. Committee members should take a membership list and compare this with the registration list indicating those not registered.
- b. If the Probate Judge's list is not a current one, it may be possible for a committee member to get the help of the Board of Registrars in determining the non-registered members.
- c. Some counties may wish to hire a special clerk or a member of the Board of Registrars during his off hours to check list against list.

* This step will not be necessary if a telephone campaign of the total membership is used.

5. Selection of Beat Workers

The number of workers needed depends on the number of Farm Bureau members within that beat.

B. Actual Campaign

1. Telephone contact with total membership

NOTE: Although this method would seem more time consuming, it would probably be easiest and most effective for Farm Bureau membership is listed under one name and other family members may be qualified voters but not registered.

- a. Set up transportation schedule of at least two set days per beat -- special county situations may call for additional transportation days.
- b. Precinct (beat) workers should look up telephone numbers for those on their lists.
- c. Telephone members (and fill out information forms)-- Refer to sample conversation and form in back.
 - 1. Explain briefly purpose of voter registration campaign.
 - 2. Obtain names of household members over 21 and indicate non-voters.

3. Give registration information (found under A of I)
 - a. Residence requirements
 - b. Poll tax deadline and requirements
 - c. Registration dates and places
4. Offer transportation -- set up time if accepted.
- d. Follow through.
 1. Personal contact with those without phone.
 2. Transporting members if necessary (probably other workers will do this).
 3. Reminder calls to those needing them.
2. Telephone Contact with Non-Voting Members Only. (Use 4 under A of II to determine this).

Follow same procedure as under #1, but use the non-voting membership list.

C. Report of Work Accomplished After Campaign

1. Beat workers return report forms to committee chairman.
2. Using published list of eligible voters (40 days prior to election) committee members check new list to see how many members were now registered as compared with the first number.
3. Complete composite report form and return to state office by April 1.

File beat workers lists and forms.

SAMPLE TELEPHONE CONTACT:

Hello, _____ This is _____. I'm participating in a voter registration drive to see that all of our _____ county Farm Bureau members are registered to vote in the next election.

Because of the changes in our state rural representation and in the voter qualifications, we feel it's going to be very important that all of our Farm Bureau members are registered voters. I wonder if you could spare just a moment to answer some questions?

Could I have the names of household members over twenty-one?

Are all of these registered to vote?

Do you know which beat your residence is located in?

(Also questions on farming).

In Alabama it is required that a person be a resident of the state for at least one year, the county for at least six months, and the beat for at least three months before they may be registered to vote in the state, county, and beat. In all state elections it is also necessary for registered voters to have paid their poll tax by February 1, in order to vote in state elections until the following February.

We would like to do all we can to encourage the non-registered voters or non-voters in your home to register. The Board of Registrars are accepting applicants on (give dates), and at (give place). If you need transportation, some Farm Bureau people will be glad to carry you in on _____ or _____.

_____ it has been a pleasure talking with you, and I certainly appreciate your allowing me your time. If you or anyone you know needs any more information about registration please call me 'cause we've really got to work together if we're going to combat the drastic political changes in our state brought about by federal intervention.

Enjoyed talking to you.

INFORMATION FORM

Family Membership Name _____

Address _____ Telephone No. _____

_____ Precinct (Beat) _____

Names of everyone over 21 years of age:	Registered	
	<u>Yes</u>	<u>No</u>
_____	()	()
_____	()	()
_____	()	()

Needs transportation ()Yes ()No.

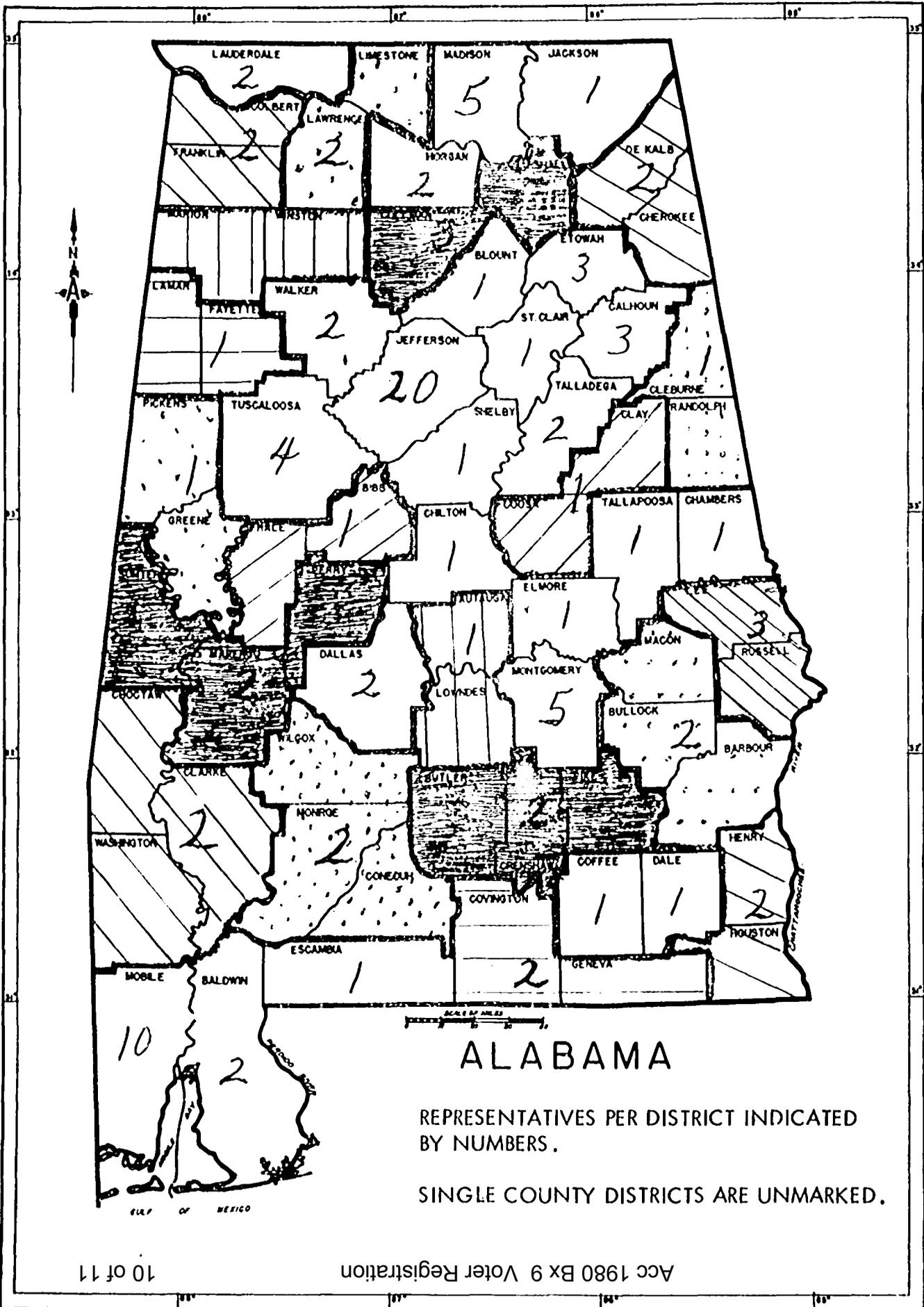
When: (Date) _____ (Time) _____

Owens a farm or timber land? ()Yes ()No.

If no -- Receiving any farm or timber income? ()Yes ()No.

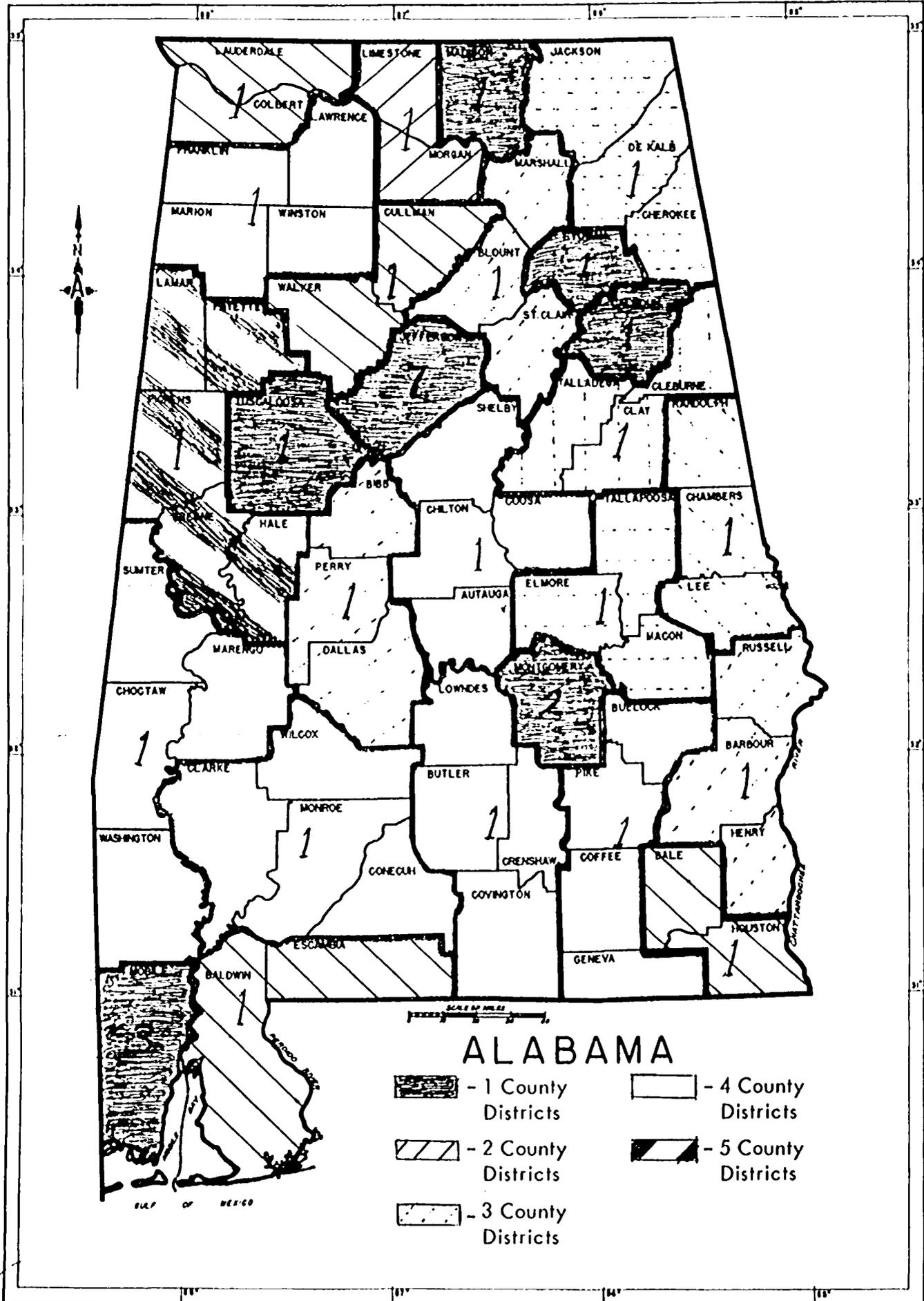
If yes -- Indicate the three major interests: ()Cotton; ()Peanuts;
()Beef Cattle; ()Dairy; ()Hogs; ()Eggs; ()Broiler; ()Timber;
()Fruits & Vegetables; ()Corn; ()Land Owner.

43 HOUSE OF REPRESENTATIVE DISTRICTS



SENATE REAPPORTIONMENT BY STATE LEGISLATURE

Acc 1980 Bx 9 Voter Registration
26 DISTRICTS



ALABAMA

-  - 1 County Districts
-  - 2 County Districts
-  - 3 County Districts
-  - 4 County Districts
-  - 5 County Districts