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N.D. OF ALABAMA

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Sent via email

Legislative Committee on Reapportionment
Room 303, State House
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Re: VRA Plaintiffs' Remedial Plan

Dear Reapportionment Committee Members,

Evan Milligan, Shalela Dowdy, Letetia Jackson, Khadidah Stone, Greater Birmingham Ministries, and the Alabama State Conference of the NAACP (collectively, the "*Milligan* Plaintiffs") and Marcus Caster, Lakeisha Chestnut, Bobby L. Dubose, Benjamin Jones, Rodney A. Love, Manasseh Powell, Ronald Smith, and Wendell Thomas (collectively, the "*Caster* Plaintiffs") jointly submit the attached remedial plan.

As you know, on June 8, 2023, the Supreme Court of the United States ruled in favor of both the *Milligan* and *Caster* Plaintiffs in holding that Alabama's 2021 congressional redistricting plan ("HB1") violated Section 2 of the Voting Rights Act ("VRA"). No other group of Plaintiffs has successfully challenged HB1. Because the Alabama Legislature's enactment of this plan (hereinafter, the "VRA Plaintiffs' Remedial Plan" or "VRA Plan") would likely resolve the pending lawsuit, we urge the Committee to give careful consideration to our VRA Plan.

In affirming the three-judge district court's preliminary injunction against HB1, the Supreme Court upheld the district court's findings that "Black Alabamians enjoy virtually zero success in statewide elections; that political campaigns in Alabama had been characterized by overt or subtle racial appeals; and that Alabama's extensive history of repugnant racial and voting-related discrimination is undeniable and well documented."[1] The Court also held that the district court had "faithfully applied our precedents and correctly determined that . . . HB1 violated §2."[2]

The Supreme Court also affirmed the findings that "elections in Alabama were racially polarized"; "on average, Black voters supported their candidates of choice with 92.3% of the vote

[1] *Allen v. Milligan*, No. 21–1086, slip op. at 14 (2023) (internal citation and quotation marks omitted).
[2] *Id*. at 15.

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Plaintiff Exhibit No. 28

while white voters supported Black-preferred candidates with 15.4% of the vote"; and, according to all the trial experts, racial polarization in Alabama is "intense, very strong, and very clear."[3]

Given the extreme degree of racially polarized voting in Alabama, the trial court's preliminary injunction order, which was upheld by the Supreme Court, emphasized the "practical reality" 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."[4] For this reason, any plan that proposes remedial districts in which Black voters constitute less than "a voting-age majority or something quite close to it" almost certainly will not conform to the district court's order.[5]

The VRA Plaintiffs' Remedial Plan carefully adheres to the decisions of both the United States Supreme Court and the federal district court. The VRA Plan contains two districts that "perform" consistently for Black voters in primary and general elections.[6] It also remedies the cracking of the Black Belt community of interest, identified by the courts, by keeping the eighteen "core" Black Belt counties together within these two remedial districts, does not split Montgomery County or any other core Black Belt county, has zero population deviation, splits only seven counties and only ten precincts,[7] and is otherwise "guided by the legislative policies underlying [HB1] to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act."[8] For instance, Districts 3, 4, 5, 6 and 7 largely maintain the "cores" of those districts as drawn by the Legislature in HB1, and Districts 1 and 2 reflect modest changes necessary to bring Alabama into compliance with the VRA. Indeed, the overall "core retention" percentage of the VRA Plaintiffs' Remedial Plan is over 80%. In further deference to the Legislature's past policy choices, the VRA Plan splits Jefferson County in essentially the same manner as HB1 and it splits Mobile County similar to the way in which the Legislature did so in its enacted 2021 State Board of Education plan. Finally, the VRA Plaintiffs' Remedial Plan is based on the Plaintiffs' illustrative plans—including "Cooper Illustrative Plan 2" and "Duchin Illustrative Plan A," which the Supreme Court identified as legally acceptable remedies—but makes specific changes to better reflect legislative choices like limiting the number of county splits and protecting district cores.[9]

For these reasons, the *Milligan* and *Caster* Plaintiffs strongly and respectfully urge the Legislature to adopt our plan. If you have any questions, please contact us through our attorneys.

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[3] *Id*. at 14 (internal citation and quotation marks omitted).
[4] *Milligan v. Merrill*, 582 F. Supp. 3d 924, 936 (N.D. Ala. 2022) (three-judge court).
[5] On behalf of the Secretary of State and the Chairs of this Reapportionment Committee, political scientist Dr. M.V. Hood testified at the preliminary injunction hearing that a "Whole County Plan" or similar plan with a 40% Black "opportunity district" centered on an intact Jefferson County would not provide Black voters with an opportunity to elect their candidate of choice as required by the VRA. *See Milligan*, Doc. 66-4 at 14. And another court recently ordered the division of the county school board into single-member districts to remedy a VRA violation and address persistent racial polarization in Jefferson County. *See Jones v. Jefferson Cnty. Bd. of Educ.*, No. 2:19-cv-01821, 2019 WL 7500528, at *2–4 (N.D. Ala. Dec. 16, 2019).
[6] *See, e.g.*, *Abbott v. Perez*, 138 S. Ct. 2305, 2332–33 (2018); *Abrams v. Johnson*, 521 U.S. 74, 94 (1997).
[7] With modest adjustments, the number of precinct or VTD splits in the VRA Plaintiffs' Plan could be reduced to seven, the same number of VTDs split by HB1.
[8] *Perry v. Perez*, 565 U.S. 388, 941 (2012) (citation and internal quotation marks omitted).
[9] *See, e.g.*, *Milligan*, slip op. at 12, 33-34.

Sincerely,

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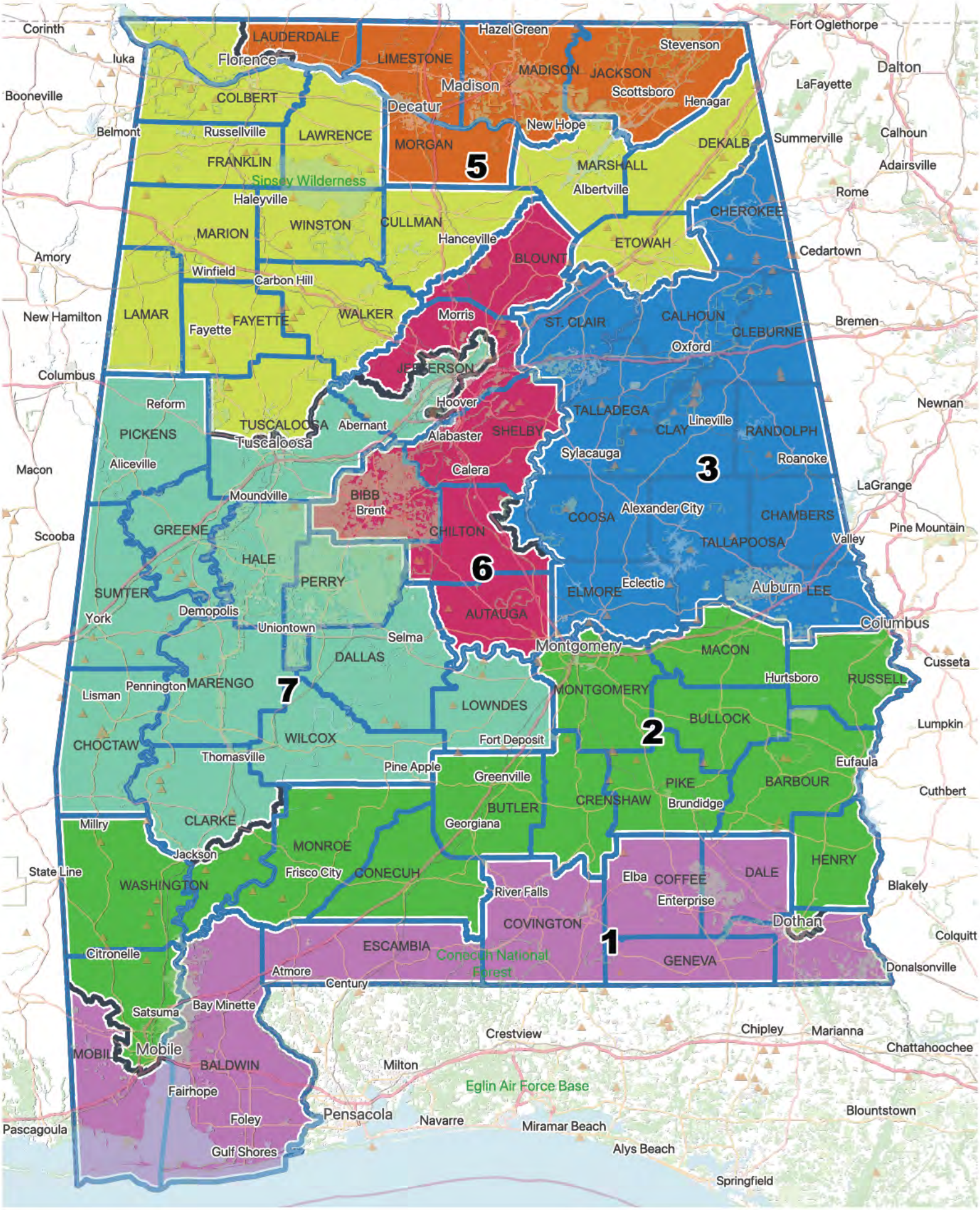
VRA Plaintiffs' Remedial Map



VRA Plaintiffs' Remedial Map

District Demographic Data

CD	Population	VAP	CVAP (2020)	Black	% Black	BVAP	% BVAP	BCVAP	% BCVAP	White	% White	WVAP	% WVAP	WCVAP	% WCVAP
1	717,754	558,142	532,306	117,087	16.3%	83,257	14.9%	80,290	15.1%	527,338	73.5%	423,469	75.9%	422,523	79.4%
2	717,754	557,855	543,316	374,699	52.2%	279,348	50.1%	279,187	51.4%	290,195	40.4%	241,133	43.2%	241,839	44.5%
3	717,754	565,115	534,107	162,156	22.6%	121,850	21.6%	114,669	21.5%	498,318	69.4%	402,042	71.1%	400,439	75.0%
4	717,754	556,133	526,676	59,655	8.3%	42,819	7.7%	40,698	7.7%	573,666	79.9%	458,324	82.4%	461,981	87.7%
5	717,754	561,187	520,376	136,782	19.1%	101,339	18.1%	94,795	18.2%	491,054	68.4%	397,809	70.9%	394,322	75.8%
6	717,754	554,731	510,682	107,721	15.0%	78,396	14.1%	71,925	14.1%	531,168	74.0%	422,414	76.1%	416,608	81.6%
7	717,755	564,003	541,718	406,636	56.7%	307,363	54.5%	305,769	56.4%	259,612	36.2%	219,353	38.9%	221,133	40.8%