

1 Q North of Monrovia, in the northern part of the county,
2 that is the area where wouldn't you agree with me at least the
3 population is very similar to what you found in the Black Belt?

4 A I would think in very north Monroe County, it would be
10:26:21 5 very similar to say Wilcox County.

6 Q Right. And you talked about the education. The high
7 school in Beatrice is J. F. Shields, right?

8 A I don't know the name of it.

9 Q But you know there is a high school in --

10:26:44 10 A That's right. I think I have been there.

11 Q Yes, sir. And it is an all-black school?

12 A I know it's predominantly black. I don't know if it's all
13 black.

14 Q And the white children around Beatrice go to the all-white
10:27:03 15 private school, Monroe Academy down in Monroeville, don't they?

16 A I don't know that.

17 Q You don't know that?

18 A No.

19 Q Well, you mentioned that there were some white folks at
10:27:13 20 your town hall meeting in Beatrice. Do you know where their
21 children go to school?

22 A I didn't ask where they children went to school. People
23 in the town hall meeting were mainly older.

24 Q Okay. You do know that there is an all-white private
10:27:29 25 academy in Monroe County where many of the white students go to

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1 school?

2 A I know that there's a private academy. I don't know the
3 racial mix of it. I don't think I have ever been to that
4 school.

10:27:41 5 Q Okay. Now, let's go over to Clarke County, if we could.

6 You represented -- and, again, I have relatives there, so
7 I am going to focus on some issues. You are represented the
8 part of Clarke County that includes Grove Hill?

9 A Part of Grove Little, not all of Grove Hill.

10:28:06 10 Q And you represented the part that goes out on Highway 84,
11 the road that goes sort of east and west to there, that's
12 Highway 84, right?

13 A Yeah.

14 Q And are you aware that there's a town of Whatley about
10:28:23 15 six miles east of Grove Hill?

16 A I am aware of it.

17 Q On Highway 84?

18 A Yes.

19 Q Okay. And so as an example, my cousins in Grove Hill or
10:28:42 20 north of Highway 84 in Grove Hill would have been represented
21 by you, right?

22 A Depending upon exactly where they live, probably so. But
23 if they were northeast, they wouldn't be represented by me.

24 Q And if they were northwest, they would be?

10:28:57 25 A They would be.

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1 Q Okay. And my cousins in Whatley, Alabama, six miles to
2 the east in the same county, would have been represented by
3 Congresswoman Sewell?

4 A I think that's right, yes.

10:29:09 5 Q Okay. And I want to be clear. This question is not meant
6 to disparage either you or Congresswoman Sewell. You would
7 agree, I think you already have, that she is an outstanding
8 congresswoman?

9 A She is an outstanding congresswoman.

10:29:26 10 Q But wouldn't you agree, sir, and I think this has been
11 your testimony, that if you had combined Clarke County, that my
12 cousins in Whatley and my cousins in Grove Hill would have been
13 better represented regardless of whether it was you or her?

14 A By having just one congressman?

10:29:52 15 Q Yes?

16 A Yeah. I think that's what I have been saying in previous
17 testimony. I think it's better for a county to have one
18 congressman and not to be split up. But what Congresswoman
19 Sewell and I did was from the very beginning we said we will
10:30:05 20 work together, and we did. We worked together very well. We
21 used to do joint town halls together for example. Thomasville
22 was not in my district, but the mayor of Thomasville would come
23 and see me every time he was in Washington. He is a personal
24 friend, and if Congresswoman Sewell needed help from
10:30:22 25 Thomasville, she got it from me 100 years ago percent of the

1 time. That's just the way we worked things out.

2 Q But despite that fact, your testimony is that it would be
3 better off to keep counties together?

4 A Yes. That's my position.

10:30:34 5 Q And you believe that it would be better to keep Tuscaloosa
6 so it's not split, for example?

7 A Yes.

8 Q And the same for other counties in Alabama that are split,
9 such as Montgomery?

10:30:46 10 A Yes. Now, I understand that when you're trying to balance
11 out population, sometimes you can't make that happen. But to
12 the maximum extent possible, counties should be kept whole and
13 contiguous in congressional districts.

14 Q And you were asked specifically about the -- about
10:31:09 15 Montgomery not having a Congress person. Do you recall that?

16 A I don't remember the question just put that way, no.

17 Q In any event, Montgomery currently does not have a member
18 of Congress living there, correct?

19 A No one that lives there, yes, that's correct.

10:31:26 20 Q Yes. I'm sorry. I wasn't clear with my question.

21 A They had Martha Roby previously, and now their present
22 member is from Coffee County.

23 Q And was it your testimony that by splitting or splitting
24 any county you might make it less likely that a congressperson
10:31:44 25 reside there?

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1 A Yeah.

2 Q Okay.

3 A You start splitting counties like that, and that county
4 loses its influence. That's why I don't want Mobile County to
10:31:55 5 be split.

6 Q And --

7 MR. DAVIS: Give me one second. Sorry to interrupt,
8 Mr. Whatley. Judge, I just want to check on Mr. Byrne. We
9 have been going about two hours.

10:32:05 10 JUDGE MARCUS: We have been going a long time.

11 Let me ask you, Mr. Whatley: How much longer you have
12 with Mr. Byrne. Perhaps this would be a convenient time for a
13 short break.

14 MR. WHATLEY: It's fine for me to take a short break,
10:32:20 15 Your Honor.

16 JUDGE MARCUS: All right. We will take a break for
17 15 minutes, and then we will pick up the balance of your
18 examination.

19 Question, though, Mr. Whatley: How much longer do you
10:32:32 20 think you have with Mr. Byrne?

21 MR. WHATLEY: I would guess about 10 or 15 minutes.
22 Perhaps the break will make it shorter.

23 JUDGE MARCUS: I'm sorry. I didn't mean to cut you
24 off.

10:32:41 25 MR. WHATLEY: I said perhaps the break will make it

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1 shorter and more organized.

2 JUDGE MARCUS: All right. We will break for
3 15 minutes and then pick up the thread of the cross by
4 Mr. Whatley and any redirect by Mr. Davis.

10:32:53 5 Thank you. We will in a 15-minute recess.

6 (Recess.)

7 JUDGE MARCUS: Mr. Whatley, are you ready to proceed
8 at this point?

9 MR. WHATLEY: Yes, sir.

10:48:40 10 JUDGE MARCUS: Mr. Byrne, you all set to go forward?

11 THE WITNESS: Yes, sir, I am.

12 JUDGE MARCUS: Thank you very much. Mr. Whatley, you
13 may complete your cross.

14 MR. WHATLEY: Thank you, Your Honor.

10:48:51 15 Suzanne, will you put back up for just a minute the 2011
16 plan? I think it's Caster Exhibit 12, Your Honor.

17 JUDGE MARCUS: Just so I'm clear, Mr. Whatley, this is
18 the plan that actually was enacted by the state Legislature in
19 2011, correct?

10:49:23 20 MR. WHATLEY: Yes, sir. Yes, sir, Your Honor. And
21 just to put it in context, Mr. Byrne, it's the plan that
22 existed when you served in Congress, correct?

23 THE WITNESS: Yes, sir.

24 BY MR. WHATLEY:

10:49:34 25 Q Okay. I want to focus back on Clarke County for just one

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1 second.

2 And I don't think I asked you about the economy of Clarke
3 County. In Clarke County, a big part of the county also
4 focuses on the tree, correct?

10:49:52 5 A Yes.

6 Q And so a paper mill and lumber mill in Jackson?

7 A Yes.

8 Q In the southern part of the county, correct?

9 A That's correct.

10:50:05 10 Q And there is a paper mill -- I don't know if you can see
11 it -- it's in the edge of Wilcox County and Pine Hill, not far
12 from Thomasville that you mentioned, correct?

13 A Yes. Yes.

14 Q And so they make paper, and they produce lumber in Clarke
10:50:28 15 County, and they don't make ships, correct?

16 A They don't make ships in Clarke County.

17 Q But they do make paper, and they do produce timber?

18 A That's correct.

19 Q Okay. We can take that down.

10:50:39 20 Mr. Byrne, I think in your -- you have clearly said before
21 -- I don't remember if it was in your testimony in the previous
22 case, or in your deposition, that you think it's important that
23 each of the urban or Metropolitan -- or each of the cities in
24 Alabama have its own congressional district or be in a separate
10:51:12 25 congressional district?

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1 A Yes. I think that the four metro areas in the state, plus
2 Dothan, Tuscaloosa, Auburn, all those areas need to have sort
3 of at the center of their community adequately represented in
4 the United States Congress.

10:51:26 5 Q So there ought to be in separate -- and to be clear, there
6 ought to be separate congressional districts or Huntsville,
7 Mobile, Montgomery, and Birmingham should each be located in a
8 separate congressional district from each other?

9 A Yes.

10:51:45 10 Q Okay. And going to Congressman Palmer, I think there was
11 some questioning about Congressman Palmer earlier maybe by both
12 counsel. Isn't it correct that Congressman Palmer currently
13 lives in Shelby County?

14 A To be honest with you, I don't know exactly where he
10:52:06 15 lives. He either lives in the southern part of Jefferson
16 County or in Shelby County. I don't know.

17 Q Were you aware that at one point he did live in Jefferson
18 County and he moved to Shelby County?

19 A I am not aware of that.

10:52:18 20 Q You are not aware of that. Okay.

21 MR. WHATLEY: Your Honors, I think that's all I have.

22 JUDGE MARCUS: Thank you. Redirect, Mr. Davis?

23 MR. DAVIS: Yes, Your Honor, briefly.

24 REDIRECT EXAMINATION

10:52:30 25 BY MR. DAVIS:

1 Q Mr. Byrne, did you turn down any meeting requests from the
2 Alabama NAACP?

3 A No.

4 Q Would you have been happy to meet with them had they asked
10:52:38 5 for a meeting?

6 A Absolutely. I meet with just about everybody.

7 Q We talked about the third districts -- and the Third
8 District and the Fourth Congressional District when you were
9 speaking with Mr. Osher. Do you consider the areas encompassed
10:52:54 10 in Alabama's Third Congressional District to be part of a
11 community of interest?

12 A I do. That's east Alabama, and it got a common set of
13 industries and things that they're interested in, and they
14 largely look to Auburn as their university.

10:53:09 15 Q What about the Fourth Congressional District, do you
16 consider those areas to be part of a community of interest?

17 A They are. We have similar industry in all those areas all
18 tied to the automobile industry, for example. And they have
19 very similar -- when you go from one of those towns to the
10:53:27 20 next, walking from the east side of the state to the west, the
21 towns are very similar to one another.

22 Q Do you consider the more urban parts of Mobile County to
23 be part of the same community of interest with Montgomery,
24 Macon, and Barbour counties?

10:53:47 25 A I have been up and down those other places. They just

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1 don't have a connection to Mobile or so.

2 Q And what about the more rural parts of Mobile County? Are
3 they part of a community of interest with the Wiregrass in
4 Dothan?

10:54:02 5 A No, they are not.

6 Q When you are considering --

7 A Let me give an example there. One of the maps I saw of
8 Covington County in the First Congressional District, there's
9 really no connection between Covington County and the main
10:54:20 10 interest that you can see in the First Congressional District.
11 So I don't see that it makes any sense to put a Wiregrass
12 county like Covington in with a district that's primarily
13 centered with Mobile and Baldwin County. It's hard to get to
14 Andalusia from Mobile, very hard. And so as the result, very
10:54:38 15 few people go back and forth between Andalusia and Mobile.

16 Q Which districts would allow a Congressman or congresswoman
17 to more effectively represent the constituents of District 1,
18 whether they're black, whether they're white, Republican,
19 Democrat, rich or poor? Would that be the districts as passed
10:54:59 20 in Alabama's plan, or the districts that plaintiffs are
21 proposing that we viewed a little while ago?

22 A The Legislature plan by far. And as I said before, I
23 testified before that committee, and I listened to other people
24 talk while I was there. And the Legislature effectively did
10:55:17 25 what we were asked to do, which was to keep our part of the

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1 state together.

2 Q Uh-huh. And would your ability as a Congressman to
3 represent your constituents, would it be negatively impacted if
4 your district changed at the last minute to a vastly different
10:55:34 5 structure, including different areas of the state?

6 A Very definitely so, yes.

7 Q We talked about a lot issues, Mr. Byrne. Is there
8 anything else you would like to bring to the Court's attention
9 as they consider these various plans?

10:55:47 10 A Yes, sir. I would want to say this. I have great respect
11 for the Court and this proceeding, and I know the Court's got
12 some difficult decisions to make. But we're pretty far along
13 into this campaign cycle. And I have seen what it does to
14 congressmen in other states when at the last minute, courts
10:56:05 15 start moving things around. And I think it hurts the
16 effectiveness of congressmen when that happens. I am not
17 saying the Court may not have a good reason to do it.

18 But as I said earlier, we are just a few months away from
19 primaries. And it would be very difficult to start shifting
10:56:22 20 this thing around. It was hard enough as it was when the
21 Legislature pass these districts. People held back and held
22 back and held back. And now, they're right in the meat of
23 these campaigns. And I just think it would be terrible if we
24 change course on all these candidates running for these various
10:56:40 25 offices, Democrat, Republican, doesn't matter. It's going to

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1 have the very same detrimental effect on those candidates and
2 on those congressmen, sitting congressmen if all of a sudden
3 these things are moved around some more.

4 And the second thing I would say is, I've tried to say a
10:56:55 5 little bit earlier, Covington County doesn't fit with the First
6 Congressional District. They're wonderful people over there.
7 I have good friends. I worked with a lot of them when we were
8 replacing the president of the community college. But I don't
9 think they would want to be in a district with Mobile because
10:57:09 10 they look to Dothan. They look to the Wiregrass.

11 So that map that has Covington County with Mobile, that
12 just doesn't fit. And I think the way the Legislature has
13 drawn the First Congressional District makes all the sense in
14 the world, given the needs that they have to try to take a few
10:57:26 15 areas away from that district presently because of the growth
16 in Baldwin County. I think they did the best they could
17 possibly do.

18 MR. DAVIS: Thank you, Your Honor.

19 MS. WELBORN: I'm sorry. We just objected to that
10:57:38 20 last line of questioning and move to strike it as beyond the
21 scope of Mr. Byrne's direct. Asking, you know, anything else
22 he wanted to add was not in Mr. Byrne's direct examination.

23 JUDGE MARCUS: It would have been wiser to object
24 before the question was asked, but while the question I think
10:57:58 25 did go beyond, the answer, I think bore upon the stuff that

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1 came up in cross. So the objection is overruled, and we will
2 not strike that portion of the testimony. But thank you.

3 Any other questions, Mr. Davis, that you have for
4 Mr. Byrne?

10:58:13 5 MR. DAVIS: No, Your Honor. That completes redirect.

6 JUDGE MARCUS: Any other questions any of the lawyers
7 have for Mr. Byrne?

8 All right. Judge Moorer, Judge Manasco, did either of you
9 have a question for Mr. Byrne?

10:58:30 10 JUDGE MANASCO: None from me.

11 JUDGE MOORER: No, sir.

12 JUDGE MARCUS: Mr. Byrne, I have got a question for
13 you. Perhaps you can help me with this.

14 On your direct examination by Mr. Davis, you were asked
10:58:47 15 about the 2021 map that the Legislature adopted for the State
16 Board of Education.

17 THE WITNESS: Right.

18 JUDGE MARCUS: And it was observed that -- you
19 observed that you testified, if I heard you right, with regard
10:59:06 20 to that and urged the Legislature not to split Mobile County.
21 Did I have that right?

22 THE WITNESS: Yes, sir, that's what I said.

23 JUDGE MARCUS: And then the testimony came out that,
24 in fact, the Legislature in 2021 split Mobile County in the
10:59:29 25 maps that it drew for the board of education, and it

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1 specifically split Mobile County between Districts 1 and 5.
2 This is the board of ed map I am talking about. Do you recall
3 all of that discussion?

4 THE WITNESS: Yes, sir, I do.

10:59:47 5 JUDGE MARCUS: I just have one question, if you know
6 the answer. I was curious, do you know why the Legislature
7 actually split Mobile County between Districts 1 and 5 when
8 they drew the board of education maps?

9 THE WITNESS: Yes, sir. They actually did this in
11:00:09 10 2011. The other district -- District 1 is the one down here.
11 District 5 I guess is the other one. That district lost a lot
12 of population, and they had to pick it up somewhere. And they
13 believed that the best way to pick it up was to go south into
14 Mobile County.

11:00:25 15 So while I was sympathetic to the fact the Legislature had
16 to make some significant changes to that district, I didn't
17 like the fact that they were splitting Mobile County because of
18 the fact the Mobile County school system is so big and has so
19 many issues as any big school systems does.

11:00:41 20 I would like to see a school board member that's focused
21 on that primarily as their job.

22 JUDGE MARCUS: Thank you much.

23 Any follow-up questions from any of the lawyers based on
24 the question that I had asked Mr. Byrne? Mr. Davis?

11:00:55 25 MR. DAVIS: No, Your Honor.

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1 JUDGE MARCUS: Mr. Whatley?

2 MR. WHATLEY: No, Your Honor.

3 JUDGE MARCUS: Mr. Osher? Counsel for --

4 MS. WELBORN: No, Your Honor.

11:01:03 5 JUDGE MARCUS: -- for Milligan?

6 All right. We thank you very much for your time and
7 efforts this morning, Mr. Byrne, and you are excused.

8 THE WITNESS: Thank you, Your Honor.

9 JUDGE MARCUS: Does that close the presentation of
11:01:20 10 evidence for the state?

11 MR. DAVIS: It does, Your Honor.

12 JUDGE MARCUS: And that would be for both the
13 Secretary of State as the party defendant and for the
14 intervening defendants McClendon and Pringle, correct?

11:01:38 15 MR. DAVIS: That's right, Judge.

16 JUDGE MARCUS: Okay. Did -- before we get to
17 exhibits, which I wanted to talk about before we went on to
18 closing arguments, was there anything by way of rebuttal either
19 from the Milligan plaintiffs, the Caster plaintiffs, or the
11:01:55 20 Singleton plaintiffs?

21 MR. BLACKSHER: Singleton plaintiffs, no, Your Honor.

22 JUDGE MARCUS: Thank you. Milligan?

23 MR. ROSS: No, Your Honor.

24 JUDGE MARCUS: And for Caster, Ms. Khanna?

11:02:09 25 MS. KHANNA: No, Your Honor.

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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Christina K Decker

01-12-2022

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

ACCR#: 255