

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

EVAN MILLIGAN, <i>et al.</i> ,	)	
	)	
<i>Plaintiffs,</i>	)	
	)	
v.	)	Case No. 2:21-cv-1530-AMM
	)	
WES ALLEN, in his official	)	THREE-JUDGE COURT
capacity as Secretary of State of Alabama,	)	
<i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	

**SECRETARY OF STATE WES ALLEN'S OBJECTIONS AND ANSWERS  
TO THE *MILLIGAN* PLAINTIFFS'  
FIRST SET OF INTERROGATORIES TO DEFENDANTS**

Pursuant to Fed. R. Civ. P. 26 and 33, Alabama Secretary of State Wes Allen hereby responds to the *Milligan* Plaintiffs' First Set of Interrogatories.

**General Statement**

Secretary Allen has relied on the information presently available to him as Secretary of State. Further or different information may be discovered during the discovery phase of the litigation. Secretary Allen will amend his Objections and Responses to the extent required pursuant to Fed. R. Civ. P. 26. Secretary Allen reserves the right to revise, correct, supplement, clarify, and amend the responses set forth herein consistent with the Federal Rules of Civil Procedure.

Secretary Allen's Responses to each request are made subject to all objections as to privilege, competence, relevance, materiality, propriety, and admissibility, as well as any and all other obligations and grounds that would require the exclusion of evidence. Secretary Allen reserves the right to make any and all such objections at the appropriate time.

Secretary Allen's answers to each and every request regarding any person's actions or intent in drafting or considering any districting map are subject to the understanding (and do not waive the arguments) that: whatever the purpose of any person involved in preparing or considering a map, "[t]he 'cat's paw' theory has no application to legislative bodies," *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2350 (2021); "determining the intent of the legislature is a problematic and near-impossible challenge," *Greater Birmingham Ministries v. Sec'y of State for State of Alabama*, 992 F.3d 1299, 1324 (11th Cir. 2021); and, "the good faith of a state legislature must be presumed," *Miller v. Johnson*, 515 U.S. 900, 915 (1995).

### **General Objections**

Secretary Allen objects to the Instructions and Definitions to the extent that they purport to impose any requirements or obligations different from those contained in the applicable Federal Rules of Civil Procedure, the applicable local Rules of this Court, applicable orders of the Court, and/or related agreements.

To the extent that any interrogatory seeks information from Secretary Allen or his staff based upon previous service as a Member of the Legislature, including but not limited to the reason or reasons for any vote or any communication had with any party concerning legislative matters, he asserts the Legislative Privilege. All responses provided herein are provided by Secretary Allen in his role as Secretary of State.

Secretary Allen further objects to the Definition of “You”, “Your”, or “Defendant” to the extent that it can be read to suggest that any individual fills the multiple roles listed. Secretary Allen will read these terms to refer to himself in his official capacity as Secretary of State.

**INTERROGATORY NO. 1:** Identify all communities of interest that you or your agents, employees, or anyone assisting you, Senator McClendon and Rep. Pringle, as Co-Chairs of the Alabama Permanent Legislative Committee on Reapportionment, including but not limited to Randy Hinaman, sought to keep together in the same congressional district in drawing Alabama’s congressional districts during the 2021 redistricting cycle.

**OBJECTION:** Secretary Allen objects to this interrogatory on grounds of Legislative Privilege to the extent that it seeks a response from him or his staff as a former Member of the Legislature.

**ANSWER:** Without waiving this objection, and answering in his official capacity as Secretary of State, Secretary Allen states that the Secretary of State is not involved in drafting or passing the Congressional redistricting plan, and does not know what communities of interest all voting members of the Legislature would have hoped

to keep together in the same congressional district when enacting the redistricting legislation.

**INTERROGATORY NO. 2:** Identify all consultants, experts, or other individuals you consulted to ensure Alabama's 2021 congressional maps complied with the Voting Rights Act and other applicable federal law, and for each identify such individuals' affiliate companies or organizations.

**OBJECTION:** Secretary Allen objects to this interrogatory on grounds of Legislative Privilege to the extent that it seeks information from him or his staff as a former Member of the Legislature.

**ANSWER:** Without waiving this objection, and answering in his official capacity as Secretary of State, Secretary Allen states that the Secretary of State was not involved in drafting or passing the 2021 congressional map and thus consulted with no "consultants, experts, or other individuals . . . to ensure Alabama's 2021 congressional maps complied with the Voting Rights Act and other applicable federal law."

**INTERROGATORY NO. 3 (Defendant Pringle only):** When you testified at your deposition that you asked Mr. Hinaman to draw maps in a "race-neutral" manner: (a) identify what you meant by "race neutral"; and (b) state whether you intended this instruction to apply only during the initial drafting of the congressional maps or throughout the consideration of the maps up until public release?

**ANSWER:** This interrogatory does not require a response from Secretary Allen.

**INTERROGATORY NO. 4:** Identify the latest date by which you believe a congressional districting plan must be in place in advance of the 2024 primary elections, including any specific deadlines, requirements, or other facts or factors that provide basis for this determination. To the extent you contend that your response to this Interrogatory depends on the exact plan being implemented, please provide the answer for: (a) the *Singleton* “Whole County” Plan; (b) the *Caster* Plaintiffs’ Illustrative Plan 1; and (c) the *Milligan* Plaintiffs Illustrative Plan B.

**OBJECTION:** Secretary Allen objects to this interrogatory on grounds of Legislative Privilege to the extent that it seeks a response from him or his staff as a former Member of the Legislature.

**ANSWER:** Without waiving this objection, Secretary Allen incorporates his Response to Court’s Order filed in this case as Doc. 162.

By providing this response, Secretary Allen is not waiving any future *Purcell* argument, particularly if there are substantial or difficult changes required of the existing Congressional plan or other unforeseen circumstances. Nor could Secretary Allen waive any future *Purcell* argument on behalf of other interested parties, including candidates.

As stated in Secretary Allen’s response to the Court’s Order, if any new plan were to be used in the 2024 elections that deviates from the existing plan, it must be in place sufficiently in advance of ballot printing (which begins on December 20, 2023), to allow time for Boards of Registrars around the State to reassign voters to new districts. Further, any new plan must be in place sufficiently in advance of the candidate qualifying deadline (November 10, 2023) so that candidates, potential

candidates, political parties, and voters have sufficient notice of the districts. It is not possible to foresee all the circumstances that could affect how long voter reassignment will take, how much notice it would be appropriate to provide interested parties of the new districts, or other issues that could arise that will affect the timing and concerns about disruption for State officials, local officials, candidates, and voters. *See Purcell v. Gonzalez*, 549 U.S. 1 (2006); *Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J., concurring).

With respect to specific plans, the *Caster* Plaintiffs' Illustrative Plan 1 and the *Milligan* Plaintiffs Illustrative Plan B deviate substantially from the existing plan and add or alter county splits. As noted in the Secretary's earlier response (Doc. 162, the Secretary's staff contacted registrars from several counties to ask about the time needed for reassignment of voters and quality checks (though staff did not ask about any particular alternative plan), and most registrars indicated the process can be done in 2 to 3 months. Jefferson County has an in-house GIS system for reassignment of voters, though the Board of Registrars recently estimated that it would take up to 5 ½ months to complete reassignment and quality checks. Mobile County also has a GIS system for reassignment of voters. The Board of Registrars there estimated they would need at least three months to complete new assignments, plus additional time to perform quality checks. The Board of Registrars in Barbour County estimated they would need at least a few months to complete new assignments. They use the ASU

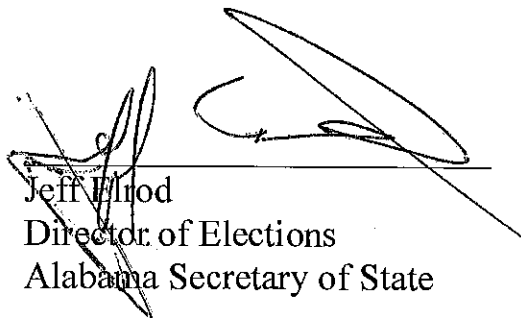
Flagship program. Secretary Allen considers it likely that either the *Caster* Plaintiffs' Illustrative Plan 1 or the *Milligan* Plaintiffs Illustrative Plan B would need to be implemented by around October 1, 2023, to provide enough time to reassign voters, print and distribute ballots, and otherwise conduct the forthcoming 2024 primary elections.

With respect to the *Singleton* "Whole County" Plan, the process of reassigning voters would not take as much time because all voters in each county moved to a new district could be reassigned en masse. However, the Secretary again emphasizes the importance of any new plan being in place not just in time for reassignments to be made but also for potential candidates to weigh their options and make decisions in advance of the candidate qualifying deadline on November 10, 2023.

\* \* \*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing Answers to Interrogatories are true and correct to the best of my knowledge, information, and belief.

Executed on: March 24, 2023



Jeff Elrod  
Director of Elections  
Alabama Secretary of State

Signed as to objections,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 27, 2023, I served the foregoing on all counsel of record by electronic mail.

s/ James W. Davis

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