

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

EVAN MILLIGAN, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
	)	Civil Action No.
JOHN H. MERRILL, <i>et al.</i>,	)	2:21-cv-01530-AMM
)	
Defendants.)	
)	

**SECRETARY OF STATE’S OBJECTIONS AND RESPONSES TO PLAINTIFFS’
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS
JOHN H. MERRILL, JIM MCCLENDON, AND CHRIS PRINGLE**

Secretary of State John H. Merrill, sued in his official capacity, objects and responds to Plaintiffs’ First Request for Production of Documents to Defendants John H. Merrill, Jim McClendon, and Chris Pringle as set out below.

General Objections

1. Secretary Merrill objects to the requests for production, including the instructions and definitions, to the extent they purport to impose upon him any obligations different from, or greater than, those established or required by the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Northern District of Alabama, or orders of this Court.
2. Without in any way limiting the foregoing objection, Secretary Merrill specifically objects to Plaintiffs’ unilateral imposition of a 14-day deadline for responding to these Requests for Production. Fed. R. Civ. P. 34(b)(2)(A) allows for 30 days to respond, absent stipulation of the parties or order of the Court, neither of which exists here. Secretary Merrill recognizes

that discovery with respect to the preliminary injunction proceedings closes on December 17, 2021, and is responding before that date.

3. The Secretary objects to the requests for production, including the instructions and definitions, to the extent they seek to impose any meaning or interpretation onto the requests other than that evident from the plain and ordinary meaning of the words used therein.
4. The Secretary objects to each of the requests for production to the extent they seek information or documents protected by the attorney client privilege, the work product doctrine, the joint defense or common interest privilege, or any other applicable privilege, exemption, or immunity.
5. The Secretary objects to each of the requests for production to the extent they seek to discover the mental impressions, conclusions, opinions, legal strategies, or legal theories of attorneys for the Defendants or their non-attorney employees working under their supervision. Such information is privileged as attorney work product. *See Hickman v. Taylor*, 329 U.S. 495 (1947).
6. The Secretary objects to the production of any documents not possessed by the Secretary of State's office as such requests are overbroad, burdensome, the expense of the sought discovery outweighs its likely benefit, and that the sought discovery is not proportional to the needs of the case. Secretary Merrill further objects to each of the requests for production to the extent they seek information not within his possession, custody, or control, on grounds that such requests are overly broad and would subject him to undue burden. Subject to these objections, and given the extraordinary circumstances of this case, the Attorney General's office is producing preclearance documents responsive to request for production no. 1, as set out below, without first requiring a subpoena; the Attorney General's office expressly rejects

any theory that the files of his law firm are in the possession, custody, or control of each of its clients.

7. The Secretary objects to each of the requests for production to the extent they seek information already in the possession, custody, or control of the Plaintiffs, or otherwise equally available to the Plaintiffs.
8. The Secretary objects to each of the requests for production to the extent they seek information that is not relevant to any claim or defense presently before the Court and thus are not reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b).
9. By answering or otherwise responding to these discovery requests, the Secretary does not concede the relevance or materiality of the information requested or the subject matter to which the request for production refers. Rather, the responses are made expressly subject to, and without in any way waiving or intending to waive, any question or objection as to the competency, relevance, privilege, or admissibility as evidence, of any of the matters referred to in the responses.
10. This production is being made to the *Milligan*, *Singleton*, and *Caster* Plaintiffs.

Reservation of Rights

The Secretary's responses to these requests for production are subject to the foregoing general objections and without waiving or intending to waive, but, on the contrary, intending to preserve and preserving:

1. All questions as to the competency, relevance, materiality, privilege, and admissibility of any response, evidence, information, or document for any purpose at any hearing in this matter or any other proceedings;

2. The right to object on any grounds to the use of information provided in any hearing in this matter or in any other proceeding;
3. The right to object on any grounds at any time to other discovery requests or other discovery, including but not limited to demands for further responses to the Plaintiffs' first set of requests for production; and,
4. The right to revise, correct, supplement, clarify, and amend the responses set forth herein consistent with the Federal Rules of Civil Procedure.

Responses to Individual Requests

REQUEST FOR PRODUCTION NO. 1: Any and all correspondence, maps, memoranda, expert reports, racial polarization analyses, or other documents, including electronically stored information, related to the State of Alabama's submission of congressional maps in the 1990, 2000, and 2010 redistricting cycles for preclearance review pursuant to Section 5 of the Voting Rights Act.⁵² U.S.C. 10203. This request includes, but is not limited to, any correspondence with the U.S. Department of Justice for the 1990, 2000, and 2010 redistricting cycles, all communications involving the Reapportionment Committee and its chairs including internal correspondence and correspondence with members of Congress for the 2010 cycle, and all communications among representatives of the State or between such representatives another governmental officials concerning any such submissions.

Response: The Secretary's website has Ala. Act Nos. 1992-63, 2002-57, and 2011-518 available for public viewing at <https://arc-sos.state.al.us/CGI/actnumber.mbr/input>.

The Secretary of State's office does not submit redistricting plans for preclearance review and is not aware of any responsive documents in its custody or control. Such plans were submitted by the Attorney General's office. The Secretary therefore objects to having to search for any such documents in Secretary of State records as Plaintiffs' request is overbroad, burdensome, the

expense of the sought discovery outweighs its likely benefit, and that the sought discovery is not proportional to the needs of the case. Without waiving the Secretary's objections, and without waiving objections to any subpoena, should one be served, the Attorney General's office has undertaken a reasonable and bounded search for the preclearance files for the 1990, 2000, and 2010 redistricting cycles and is providing documents responsive to this Request, as further set out below.

In searching for, reviewing, and producing documents on the combined Plaintiffs, the Attorney General's office has rejected the definitions of "concerning", "related to", "describe", and "document", as overbroad, unduly burdensome, and not proportional to the needs of this case, especially, but not only, given the exceptionally short time available for discovery for these preliminary injunction proceedings. The Attorney General's office has searched the current paper preclearance files, as well as selected paper files stored in the basement and most likely to yield responsive documents. Hundreds of pages of documents have been scanned for production and hundreds more will be. The Attorney General's office is not producing redistricting litigation documents except where it is clear that those documents were part of a preclearance submission. Additionally, while the Attorney General's office has searched our electronic document management system for preclearance files, the office has not undertaken a search of counsel's emails or computers. The searches which have not been undertaken would be unduly burdensome, disproportionate to the needs of the case, and unlikely to produce non-privileged documents.

By providing these documents, the Attorney General's office is not waiving any privileges and, further, is not attempting to subject itself to the jurisdiction of this court beyond the extent to which it serves as counsel for the Secretary of State.

Subject to the foregoing, a production of 728 documents, Bates stamped SOS000001 through SOS007023, gathered by the Attorney General's office from its files, is being produced contemporaneously *via* an electronic link to a zipped, password-protected file.

REQUEST FOR PRODUCTION NO. 2: All Documents and communications including electronically stored information, concerning the drawing of the congressional districts adopted in HB 1, including but not limited to all communications with and documents provided to, considered, or relied upon by persons who drew, reviewed, approved, or adopted the determination to draw districts as reflected in HB 1.

Response: The Secretary has no documents that correspond to this Request. .

REQUEST FOR PRODUCTION NO. 3: Any maps, draft maps, memoranda, reports, analyses, correspondence, or other documents, including electronically stored information, concerning the drawing of the congressional districts in 2021 including those adopted in HB 1. This Request includes, but is not limited to, documents concerning the decision to maintain congressional district 7 as a majority-Black district, the decision to maintain the general shapes of the 2011 districts, racial polarization in the Alabama electorate, including congressional districts or [S]tate legislative districts, the role of race in drawing districts, and correspondence between or among You, individuals in the Legislative Reapportionment Office, any map drawers, experts, legislators, members of Congress, or anyone else concerning the drawing of the challenged congressional districts or any draft maps of the challenged congressional districts considered but not adopted.

Response: The Secretary has no documents that correspond to this Request.

REQUEST FOR PRODUCTION NO. 4: Documents, including electronically stored information, sufficient to show any and all criteria used in drawing and approving the contours, limits, or boundaries included in the congressional districts adopted in HB 1.

Response: The Secretary has no documents that correspond to this Request.

REQUEST FOR PRODUCTION NO. 5: All Documents, including electronically stored information, concerning any analysis or evaluation, including but not limited to racial polarization analysis or other analysis concerning voting patterns, that were conducted, reviewed, or relied upon in drawing, reviewing, adopting, or approving the congressional districts adopted in HB 1, including but not limited to communications with the person(s) who conducted any such analysis. This request includes, but is not limited to all documents and communications concerning whether to conduct or use any racial polarization analyses or any other analyses concerning voting patterns, regardless whether such analyses were actually used or conducted, including but not limited to the materials relied upon to determine which districts received any racial polarization study, in connection with drawing the congressional districts adopted in HB 1.

Response: The Secretary has no documents that correspond to this Request.

REQUEST FOR PRODUCTION NO. 6: All transcripts, minutes, or other notes, including electronically stored information, recording or referencing the conduct of any meetings of any legislative committee or subcommittee in connection with or in furtherance the adoption of HB 1.

Response: The Secretary has no documents that correspond to this Request

REQUEST FOR PRODUCTION NO. 7: All documents, including electronically stored information, provided to or relied upon by (a) any expert who defendants intend to call to testify in this matter; or (b) any consultant, advisory, or other individual who provided advice or consultation concerning, or participated in the drawing, evaluation, or analysis of, the congressional districts adopted in HB 1.

Response: The Secretary has no documents that correspond to this Request. Expert materials were, and will be, disclosed pursuant to the terms of Court orders. Any additional communications between experts and the Secretary's litigation counsel are protected by attorney client privilege and/or attorney work product, *see* Fed. R. Civ. P. 26(b)(4)(B) & (C), and no effort has been undertaken to gather these materials for redaction/withholding.

Respectfully submitted,

Steve Marshall,
Attorney General

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Certificate of Service

I hereby certify that on December 13, 2020, I served the foregoing on all counsel of record by electronic mail.

/s James W. Davis
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**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
)	
JOHN H. MERRILL, in his official	)	THREE-JUDGE COURT
capacity as Alabama Secretary of State,)	
<i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

**SECRETARY OF STATE WES ALLEN’S OBJECTIONS AND
RESPONSES TO THE *MILLIGAN* PLAINTIFFS’
[THIRD] REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to FED. R. CIV. P. 26 and 34, Alabama Secretary of State Wes Allen, sued in his official capacity, hereby responds to the *Milligan* Plaintiffs’ third request for production of documents as set out below.

General Statement

Secretary Allen has relied on the information presently available to him. 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 responses 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 each of the requests for production to the extent they seek information or documents protected by the attorney client privilege, the work product doctrine, the joint defense or common interest privilege, or any other applicable privilege, exemption, or immunity.

To the extent that any request seeks information or documents from Secretary Allen or his staff based upon previous service as a Member of the Legislature, he asserts the Legislative Privilege. All responses provided herein are provided by Secretary Allen in his role as Secretary of State, and all documents are limited to those of the Secretary of State.

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

Further, Secretary Allen objects to the production of any documents not possessed by the Secretary of State's office because such requests are overbroad and unduly burdensome, the burden outweighs the importance and likely benefit of the discovery, and the requests are not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Unless otherwise specifically indicated, the Secretary has undertaken no investigation into what, if any, responsive information or documents may be held by experts, his litigation counsel, members or employees of the Alabama Legislature, or elsewhere outside the Secretary's office.

Similarly, Secretary Allen objects to the extensive overbreadth of the requests, especially when read in combination with the Definitions and Instructions. *See, e.g.*, Definition Nos. 3-5, 9; Instruction Nos. 4-6, 12, 19. As just one example, the requests'

overbreadth combined with the Instruction to produce not just the responsive document, but also “all non-identical copies, including all drafts, of each responsive document” is unduly burdensome, imposes a burden outweighing the importance and likely benefit of the discovery, and may create a volume of results that is not proportional to the needs of the case when considering documents such as manuals, guides, and the like. *See* Fed. R. Civ. P. 26(b)(1). Such documents, if at all relevant to the matters at hand, may be only tangentially related and necessarily go through multiple revisions (and not necessarily to the portion which may be responsive). Preliminary review of documents already collected for review include, for example, more than 100 copies of outdated Candidate Filing Guides, some of which are merely drafts. Providing anything other than the final version of the document would be a waste of resources, and providing drafts would require more thorough review and potential redactions for privileged or otherwise protected matters. This burden does not appear to be at all appropriate for this case, and the Secretary will not undertake it.

Secretary Allen further objects to Plaintiffs’ use of boilerplate Definitions and Instructions which are not tailored to this litigation or to these requests. *See, e.g.*, Definition No. 5; Instruction No. 6.

Secretary Allen objects to each of the requests for production to the extent they seek information already in the possession of the Plaintiffs, or otherwise equally available to the Plaintiffs.

Secretary Allen specifically objects to the demand that he produce documents for inspection or copies within 30 days after service. *See* FED. R. CIV. P. 34(b)(2)(A), (B). Secretary Allen will produce documents on a rolling basis. As applicable, privilege logs will be produced on a rolling basis, corresponding with the document productions. Productions will be made to the *Milligan*, *Singleton*, and *Caster* Plaintiffs.

Secretary Allen objects to the requests for production, including the Definitions and Instructions, to the extent they seek to impose any meaning or interpretation onto the requests other than that evident from the plain and ordinary meaning of the words used therein.

Secretary Allen objects to each of the requests for production to the extent they seek information that is not relevant to any claim or defense presently before the Court and thus are not reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b).

REQUEST FOR PRODUCTION NO. 1: All communications and documents exchanged between Randy Hinaman and Defendants, members of Congress, other legislators, legislative or committee staff, individuals in the Legislative Reapportionment Office, or others, concerning maps, draft maps, memoranda, reports, analyses, correspondence, or other documents, including

electronically stored information, concerning the drawing of congressional district maps in 2021 including those adopted in HB 1. This Request includes, but is not limited to, communications concerning the decision to maintain congressional district 7 as a majority-Black district, the decision to maintain the general contours of the 2011 districts, racial polarization in the Alabama electorate including congressional districts or state legislative districts, the role of race in drawing districts, and any draft maps of the challenged congressional districts considered but not adopted.

RESPONSE: Secretary Allen objects to this request on grounds of Legislative Privilege to the extent that it seeks a response from him, or any member of his staff, as a former Member of the Legislature.

Secretary Allen objects to this request to the extent that it seeks documents protected by the attorney-client privilege or work product doctrine.

Secretary Allen objects to this request to the extent that it seeks documents concerning State legislative districts, which are not at issue in this litigation, on grounds that the request is not relevant to any claim or defense presently before the Court and thus are not reasonably calculated to lead to the discovery of admissible evidence, Fed. R. Civ. P. 26(b), and also disproportionate to the needs of this case.

Secretary Allen objects on grounds that this request is unduly complex and confusing, and ultimately appears to be redundant of requests propounded and responded to in late 2021.

Secretary Allen further objects on grounds that there was no “decision to maintain congressional district 7 as a majority-Black district.”

Secretary Allen objects that this request is for documents related to activities that are not part of the duties of the Secretary of State, namely, drawing and adopting congressional districts. To require Secretary Allen to search for documents related to such activities, when it is so unlikely that any responsive documents are in his possession, is unduly burdensome and not proportional to the needs of the case.

Without waiving these objections, Secretary Allen states that he will not undertake any search specific for documents responsive to this request. However, as set out herein, he has undertaken searches in response to other requests, and the ESI searches included the terms *redistrict* and *reapportion*. Should those search terms yield non-privileged documents responsive to this request, those documents will be produced except that the Secretary is not producing documents that pertain only to State legislative districts.

REQUEST FOR PRODUCTION NO. 2: All communications between any Defendant and legislators, legislative staff, or others, related to correspondence, maps, memoranda, expert reports, racial polarization analyses, or other documents, including electronically stored information, related to the State of Alabama's submission of congressional maps in the 1990, 2000, and 2010 redistricting cycles for preclearance review pursuant to Section 5 of the Voting Rights Act. 52 U.S.C. §10304. This request includes, but is not limited to, any communications about correspondence with the U.S. Department of Justice with respect to the 1990, 2000, and 2010 redistricting cycles, all communications involving the Reapportionment Committee and its chairs including internal correspondence and correspondence with members of Congress for the 2010 cycle, and all communications among representatives of the State or between such representatives and other governmental officials concerning any such submissions.

RESPONSE: Secretary Allen objects to this request on grounds of Legislative Privilege to the extent that it seeks a response from him, or any member of his staff, as a former Member of the Legislature.

Secretary Allen also objects to this request to the extent that it seeks documents protected by the attorney-client privilege or work product doctrine.

Secretary Allen objects on grounds that this request is unduly complex and confusing, and ultimately appears to be redundant of requests propounded and responded to in late 2021. The Secretary adopts and incorporates his predecessor's December 2021 response and objections by reference. Secretary Allen further objects on grounds that the Attorney General's Office, though not required to, made a good-faith search for documents related to the 1990s, 2000s, and 2010s preclearance submission in late 2021 and produced responsive documents. The Attorney General undertook this effort, under extreme time limitations, on the theory that his Office, rather than the Secretary of State's Office, would be most likely to have responsive documents insofar as the Secretary is not involved in the drawing of congressional districts and the Attorney General makes preclearance submissions for State-adopted redistricting plans. Nonetheless, following recent discussions with Plaintiffs' counsel, it appears that Plaintiffs are focused specifically on whether the Secretary of State's Office has responsive documents. Accordingly, the Attorney General has not, and will not, repeat or update his prior search and instead the present focus has been

on whether the Secretary may have responsive documents. It would be unduly burdensome and not proportional to the needs of the case, and the burden would outweigh the importance and likely benefit of the discovery, for the Attorney General to be required to revisit his earlier search. *See* Fed. R. Civ. P. 26(b)(1).

That said, one box of documents pulled from the basement for search related to a subsequent request contained some documents responsive to this request, or arguably so. Those documents are being produced, with one exception. An oversized map found in the box appears to a duplicate of a map which the Attorney General's Office previously worked with the Alabama Department of Archives and History to have scanned. The earlier map was produced as SOS008999. We are not scanning and producing the oversized map at this time. Secretary Allen objects to any demand to do so as not important to resolving the issues and because the burden of doing so outweighs any negligible benefit. *See* Fed. R. Civ. P. 26(b)(1).

With respect to documents in the Secretary's possession, the Secretary has undertaken a search for emails responsive to this request and request no. 6. Two different kinds of searches were needed. The details which follow are from the Secretary's IT staff.

A Veritas proximity search was conducted on accounts for Brent
Beal, David Brewer, Jean Brown, Jeff Elrod (Merrill administration),

Hugh Evans, Clay Helms, Emily Marsal, John Merrill, and Adam Thompson. The following searches were conducted:

- “1971 120”~6 (1971 within 6 words of 120)
- “1965 564”~3 (1965 within 3 words of 564)
- 11-518
- 02-57
- 92-63
- 81-929
- preclear* (word starts with preclear)
- redistrict* (word starts with redistrict)
- reapportion* (word starts with reapportion)
- “voting rights” AND “rights section”~5 AND “voting section”~6 (the phrase “voting rights” AND rights within 5 words of section AND voting within 6 words of section)

Additionally, manual searches within Outlook were conducted on accounts for Laural Bunn, Jeff Elrod (Allen administration), and Sarah Telofski. Outlook would not allow for proximity searches and dashes did not function well. The search terms were adjusted to:

- “1971*120”

- “1965*564”
- “11*518”
- “02*57”
- “92*63”
- “81*929”
- “preclear”
- “redistrict”
- “reapportion”
- “voting rights section”

Outlook search terms function as if they are preceded and followed by wildcards.

These two searches returned nearly 10,000 emails, which approximately doubled when loaded into the Attorney General’s e-discovery platform. An earlier search returned more than 80,000 responses for “maps” and more than 25,000 responses for “justice.” Accordingly, those search terms were not used (and are not reflected above), as it would be unduly burdensome to review these documents for potential production given the Secretary’s limited involvement in preclearance.

The Secretary also ran searches on two network storage servers as follows, again in the words of the Secretary’s IT staff.

We used a regular expression for the file search tool. We made that regular expression to be as close as possible to the terms used in the Veritas email search.

The criteria were as follows

- 1971 and 120 (1 to 6 words apart) OR
- 1965 and 564 (1 to 3 words apart) OR
- 11-518 OR
- 02-57 OR
- 92-63 OR
- 81-929 OR
- Preclear* OR
- Redistrict* OR
- Reapportion* OR
- “Voting rights” and section (1 to 5 words apart)

Additionally, the searches were limited to files smaller than 250MB in order to eliminate large voter lists which had been returned as hits. The search of the first network storage server returned nearly 2,000 documents, including duplicates. The search of the second network storage server, which includes back-ups of documents and emails, has finished running today. Preliminary information indicates that it has returned more than 13,000 documents.

Additionally, the Secretary checked for paper documents in the file cabinets and closet where such documents, if they exist, would most likely be, and ascertained that responsive paper documents are highly unlikely to be stored at the Secretary's warehouse. A couple of boxes worth of potentially responsive documents were located. These are being scanned and reviewed.

Non-privileged, responsive documents will be produced on a rolling basis.

REQUEST FOR PRODUCTION NO. 3: All communications between any Defendant and legislators, legislative staff, or others related to maps, draft maps, memoranda, reports, analyses, correspondence, or other documents, including electronically stored information, concerning the drawing of congressional district maps in 2021 including, but not limited to those adopted in HB 1. This Request includes, but is not limited to, documents concerning the decision to maintain congressional district 7 as a majority-Black district, the decision to maintain the general shapes of the 2011 districts, racial polarization in the Alabama electorate, including congressional districts or state legislative districts, the role of race in drawing districts, and correspondence between or among You, individuals in the Legislative Reapportionment Office, any map drawers, experts, legislators, members of Congress, or anyone else concerning the drawing of the challenged congressional districts or any draft maps of the challenged congressional districts considered but not adopted.

RESPONSE: Secretary Allen objects to this request on grounds of Legislative Privilege to the extent that it seeks a response from him, or any member of his staff, as a former Member of the Legislature.

Secretary Allen objects to this request to the extent that it seeks documents protected by the attorney-client privilege or work product doctrine.

Secretary Allen objects to this request to the extent that it seeks documents concerning State legislative districts, which are not at issue in this litigation, on grounds that the request is not relevant to any claim or defense presently before the Court and thus are not reasonably calculated to lead to the discovery of admissible evidence, Fed. R. Civ. P. 26(b), and also disproportionate to the needs of this case.

Secretary Allen objects on grounds that this request is unduly complex and confusing, and ultimately appears to be redundant of requests propounded and responded to in late 2021 as well as of other requests addressed herein.

Secretary Allen further objects on grounds that there was no “decision to maintain congressional district 7 as a majority-Black district.”

Secretary Allen objects that this request is for documents related to activities that are not part of the duties of the Secretary of State, namely, drawing and adopting congressional districts. (Secretary Allen does not understand this request to include any communications that the Secretary’s office has had about *implementation* of the maps; a subsequently propounded request addresses implementation while this one seems to concern the choices made in drawing the maps.) To require Secretary Allen to search for documents related to decisions about how the map will be drawn, when it is so unlikely that any responsive documents are in possession, is not proportional to the needs of the case.

Without waiving these objections, Secretary Allen states that he will not undertake any search specific for documents responsive to this request. However, as set out herein, he has undertaken searches in response to other requests, and the ESI searches included the terms *redistrict* and *reapportion*. Should those search terms yield non-privileged documents responsive to this request, those documents will be produced except that the Secretary is not producing documents that pertain only to State legislative districts.

Additionally, because this request is the broadest, general materials and news clips will be coded as responsive to this request. The Secretary objects to reviewing news clips individually as unduly burdensome and not proportional to the needs of the case and is simply producing them without in-depth review. That some of these documents may turn out to only concern State legislative districts is not in any way intended as a waiver of the Secretary's objection to producing documents concerning only State legislative districts.

REQUEST FOR PRODUCTION NO. 4: All communications between any Defendant and legislators, legislative staff, or others concerning any analysis or evaluation, including but not limited to racial polarization analysis or other analysis concerning voting patterns or communities of interest, that were conducted, reviewed, or relied upon in drawing, reviewing, adopting, or approving the congressional districts adopted in HB 1, including but not limited to communications with the person(s) who conducted any such analysis. This request includes, but is not limited to, all documents and communications concerning whether to conduct or use any racial polarization analysis or any other analyses concerning voting patterns, regardless whether such analyses were actually used or conducted, including but not limited to the materials relied upon to determine which districts were the subject of any racial polarization

study or analysis, in connection with drawing the congressional district maps adopted in HB 1.

RESPONSE: Secretary Allen objects to this request on grounds of Legislative Privilege to the extent that it seeks a response from him, or any member of his staff, as a former Member of the Legislature.

Secretary Allen objects to this request to the extent that it seeks documents protected by the attorney-client privilege or work product doctrine.

Secretary Allen objects on grounds that this request is unduly complex and confusing, and ultimately appears to be redundant of requests propounded and responded to in late 2021 as well as of other requests addressed herein.

Secretary Allen objects that this request is for documents related to activities that are not part of the duties of the Secretary of State, namely, drawing and adopting congressional districts. To require Secretary Allen to search for documents related to such activities, when it is so unlikely that any responsive documents are in his possession, is not proportional to the needs of the case.

Without waiving these objections, Secretary Allen states that he will not undertake any search specific for documents responsive to this request. However, as set out herein, he has undertaken searches in response to other requests, and the ESI searches included the terms *redistrict* and *reapportion*. Should those search terms yield non-privileged documents responsive to this request, those documents will be produced.

REQUEST FOR PRODUCTION NO. 5: All communications between any of the Defendants and any individuals other than members of the Alabama Legislature concerning the drawing of congressional district maps in the 2021 redistricting cycle including, but not limited to, the National Republican Redistricting Trust, individuals in the Legislative Reapportionment Office, any map drawers, experts, members of Congress, or anyone else.

RESPONSE: Secretary Allen objects to this request on grounds of Legislative Privilege to the extent that it seeks a response from him, or any member of his staff, as a former Member of the Legislature.

Secretary Allen objects to this request to the extent that it seeks documents protected by the attorney-client privilege or work product doctrine.

Secretary Allen objects on grounds that this request appears to be redundant of requests propounded and responded to in late 2021 as well as of other requests addressed herein.

Secretary Allen objects that this request is for documents related to activities that are not part of the duties of the Secretary of State, namely, drawing and adopting congressional districts. To require Secretary Allen to search for documents related to such activities, when it is so unlikely that any responsive documents are in his possession, is not proportional to the needs of the case.

Without waiving these objections, Secretary Allen states that he will not undertake any search specific for documents responsive to this request. However, as set out herein, he has undertaken searches in response to other requests, and the ESI searches included the terms *redistrict* and *reapportion*. Should those search terms

yield non-privileged documents responsive to this request, those documents will be produced.

REQUEST FOR PRODUCTION NO. 6: All correspondence, maps, memoranda, reports, notes, analyses, or other documents, including electronically stored information, related to the State of Alabama's submission of congressional maps in the 1965, 1970, and 1980 redistricting cycles for preclearance review pursuant to Section 5 of the Voting Rights Act. 52 U.S.C. §10304. This request includes, but is not limited to, any correspondence with the U.S. Department of Justice related to Alabama Senate Bill No. 208 (dated Aug. 26, 1965), and the 1970 and 1980 redistricting cycles, all communications involving the Governor, Secretary of State, members of the legislature, the Reapportionment Committee, and its chairs including internal correspondence and correspondence with members of Congress for these cycles, and all communications among representatives of the State or between such representatives and other governmental officials concerning any such submissions.

RESPONSE: Secretary Allen objects to this request on grounds of Legislative Privilege to the extent that it seeks a response from him, of any member of his staff, as a former Member of the Legislature.

Secretary Allen objects to this request to the extent that it seeks documents protected by the attorney-client privilege or work product doctrine.

Secretary Allen further objects on grounds of relevance and that the request is not proportional to the needs of the case. Documents related to preclearance submissions before 1990 will have no value in deciding the issues in this case.

Without waiving these objections, and without conceding that such documents are in his custody or control, Secretary Allen states that the Alabama Attorney General's office has conducted a reasonable and bounded search of its files related to

preclearance submissions in question, by looking in the places where such files can reasonably be expected to be if such files still exist. Should files related to litigation for these redistricting cycles be found then, as before, litigation documents will only be produced where it is clear that those documents were part of a preclearance submission. Given the age of the documents in question, the Attorney General's Office is limiting its search to paper files and to a limited search of electronic records. Any attempt to search for ESI using search terms can reasonably be anticipated to return numerous false hits and is not reasonably likely to turn up files that would not be found by looking for files as they should be labeled. The Attorney General's Office is undertaking this search as a courtesy to streamline the discovery process, and is not waiving any privileges or subjecting itself to the jurisdiction of this court beyond the extent to which it serves as counsel for the Secretary of State.

With respect to documents in the possession of the Secretary of State, the Secretary has undertaken the efforts described in response to request no. 2, *supra*, and will produce consistent with that response.

REQUEST FOR PRODUCTION NO. 7: All correspondence, communications, maps, draft maps, memoranda, reports, notes, analyses, or other documents, including electronically stored information, concerning the drawing of the congressional districts in 1965, and in the 1970 and 1980 redistricting cycles. This Request includes, but is not limited to, documents concerning the decision to combine Mobile and Baldwin County into one district, the decision to split counties in general, racial polarization in the Alabama electorate, including congressional districts or state legislative districts, the role of race in drawing districts, and correspondence between or among the Governor, Secretary of State, members of the

legislature, the Legislative Reapportionment Office, map drawers, experts, members of Congress, or anyone else concerning the drawing of the congressional districts in 1965, and after the 1970 and 1980 censuses or any draft maps of such maps considered but not adopted.

RESPONSE: Secretary Allen objects to this request on grounds of Legislative Privilege to the extent that it seeks a response from him, or any member of his staff, as a former Member of the Legislature.

Secretary Allen objects to this request to the extent that it seeks documents protected by the attorney-client privilege or work product doctrine.

Secretary Allen objects to this request to the extent that it seeks documents concerning State legislative districts, which are not at issue in this litigation, on grounds that the request is not relevant to any claim or defense presently before the Court and thus are not reasonably calculated to lead to the discovery of admissible evidence, Fed. R. Civ. P. 26(b), and also disproportionate to the needs of this case.

Secretary Allen objects that this request is for documents related to activities that are not part of the duties of the Secretary of State, namely, drawing and adopting congressional districts. To require Secretary Allen to search for documents related to such activities, when it is so unlikely that any responsive documents are in his possession, is not proportional to the needs of the case.

Without waiving these objections, Secretary Allen states that he will not undertake any search specific for documents responsive to this request. However, as set out herein, he has undertaken searches in response to other requests, and the ESI

searches included the terms *redistrict* and *reapportion*. Should those search terms yield non-privileged documents responsive to this request, those documents will be produced except that the Secretary is not producing documents that pertain only to State legislative districts.

Respectfully Submitted,

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Attorney General

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Solicitor General
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Counsel for Secretary Allen

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
Counsel for Secretary Allen

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

BOBBY SINGLETON, et al.,)	
)	
<i>Plaintiffs,</i>)	
)	
v.	)	Case No.: 2:21-cv-1291-AMM
)	
WES ALLEN, in his official	)	THREE-JUDGE COURT
capacity as Alabama Secretary of)	
State, et al.,)	
)	
<i>Defendants.</i>)	

EVAN MILLIGAN, et al.,)	
)	
<i>Plaintiffs,</i>)	
)	
v.	)	Case No.: 2:21-cv-01530-AMM
)	
WES ALLEN, in his official	)	THREE-JUDGE COURT
capacity as Secretary of State of)	
Alabama, et al.,)	
)	
<i>Defendants.</i>)	

MARCUS CASTER, et al.,)	
)	
<i>Plaintiffs,</i>)	
)	
v.	)	Case No.: 2:21-cv-01536-AMM
)	
WES ALLEN, in his official)	
Capacity as Alabama Secretary of)	
State, et al.,)	
)	

Defendants.)

**SECRETARY OF STATE WES ALLEN'S OBJECTIONS AND
RESPONSES TO *MILLIGAN, CASTER, AND SINGLETON* PLAINTIFFS'
FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to FED. R. CIV. P. 26 and 34, Alabama Secretary of State Wes Allen, sued in his official capacity, hereby responds to the *Milligan, Caster, and Singleton* Plaintiffs' fourth request for production of documents, which were served on March 15, 2023.

General Statement

Secretary Allen has relied on the information presently available to him. 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.

General Objections

Secretary Allen objects to each of the requests for production to the extent they seek information or documents protected by the attorney client privilege, the work product doctrine, the joint defense or common interest privilege, or any other applicable privilege, exemption, or immunity.

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

Further, Secretary Allen objects to the production of any documents not possessed by the Secretary of State's office because such requests are overbroad and unduly burdensome, the burden outweighs the importance and likely benefit of the discovery, and the requests are not proportional to the needs of the case. *See* FED. R. CIV. P. 26(b)(1). Unless otherwise specifically indicated, the Secretary has undertaken no investigation into what, if any, responsive information or documents may be held by experts, his litigation counsel, members or employees of the Alabama Legislature, or elsewhere outside the Secretary's office.

Similarly, Secretary Allen objects to the extensive overbreadth of the requests, especially when read in combination with the Definitions and Instructions. As just one example, the requests' overbreadth combined with the Instruction to produce not

just the responsive document, but also “all non-identical copies, including all drafts, of each responsive document” is unduly burdensome, imposes a burden outweighing the importance and likely benefit of the discovery, and may create a volume of results that is not proportional to the needs of the case when considering documents such as manuals, guides, and the like. *See* FED. R. CIV. P. 26(b)(1). Such documents, if at all relevant to the matters at hand, may be only tangentially related and necessarily go through multiple revisions (and not necessarily to the portion which may be responsive). Providing anything other than the final version of the document would be a waste of resources, and providing drafts would require more thorough review and potential redactions for privileged or otherwise protected matters. This burden does not appear to be at all appropriate for this case, and the Secretary will not undertake it.

Secretary Allen further objects to Plaintiffs’ use of boilerplate Definitions and Instructions which are not tailored to this litigation or to these requests. *See, e.g.*, Definition No. 5; Instruction No. 6.

Secretary Allen objects to each of the requests for production to the extent they seek information already in the possession of the Plaintiffs, or otherwise equally available to the Plaintiffs.

Secretary Allen specifically objects to the demand that he produce documents for inspection or copies within 30 days after service. *See* FED. R. CIV. P. 34(b)(2)(A),

(B). Secretary Allen will produce documents on a rolling basis. As applicable, privilege logs will be produced on a rolling basis, corresponding with the document productions. Productions will be made to the *Milligan*, *Singleton*, and *Caster* Plaintiffs. Productions may be simultaneous with productions made in response to other requests for production pending in these cases. Please note that 2023all_RFP refers to these requests, while 2023M_RFP refers to the *Milligan* Plaintiff's separate requests for production served this year.

Secretary Allen objects to the requests for production, including the Definitions and Instructions, to the extent they seek to impose any meaning or interpretation onto the requests other than that evident from the plain and ordinary meaning of the words used therein.

Secretary Allen objects to each of the requests for production to the extent they seek information that is not relevant to any claim or defense presently before the Court and thus are not reasonably calculated to lead to the discovery of admissible evidence. FED. R. CIV. P. 26(b).

REQUEST FOR PRODUCTION NO. 1: All documents and communications relied upon or referenced in drafting Defendant Allen's Response to the Court's Order, *Milligan*, ECF No. 162, or in the Declaration of Clay Helms, *Milligan*, ECF No. 79-7, including but not limited to communications with county election officials, candidates, individual voters, or individuals within the Secretary of State's office.

RESPONSE: Secretary Allen objects to this request on grounds of attorney client privilege and attorney work product. As both documents were produced in the course of this litigation, Secretary Allen will not provide or log documents, including drafts, exchanged with counsel.

Secretary Allen further objects on grounds that this request for production is unduly burdensome, the burden outweighs the importance and likely benefit of the discovery, and the requests are not proportional to the needs of the case insofar as this request demands identification of each and every of the numerous documents (including emails) consulted or relied upon provided. The Secretary cannot reasonably be expected to remember every single specific document (including specific emails) relied upon or referenced. This is particularly true with respect to the declaration of Clay Helms as to which multiple emails and some spreadsheets that he *may* have relied upon or referenced are being produced on a rolling basis pursuant to Request for Production No. 2, below, and it would take a disproportionate amount of time for counsel to review those documents with the Secretary of State's office to determine which were relied upon or referenced (if such can even be remembered) and thus should be coded as responsive to this request instead. Such efforts would be unduly burdensome, and time spent on such a project would take away from time available to reviewing documents for responsiveness, thus slowing production. Secretary Allen also objects to producing documents specifically

referenced in either his response to the Court's order or Mr. Helms's declaration and equally available to the Plaintiffs.

Secretary Allen further objects on grounds that this request for production is actually at least two separate requests with different actors, which creates ambiguity.

Without waiving these objections, the Secretary will respond as follows. As to the response to the court order, the Secretary will produce Jeff Elrod's notes entitled *County Responses on Redistricting Timeframe*, Vicki Wittenborg's February 21, 2023 email bearing the subject *GIS/ PowerProfile Redistricting Survey Responses*, and Mary Kohls' February 14, 2023 email bearing the subject *BOR Power Profile Updating*. Due to technical issues, Kohls' email is being produced as a PDF entitled *BOR Power Profile Updating*. Documents and communications discussing the timing, processes, or procedures used for assigning voters to new congressional districts following congressional districting in Alabama in 2011-2012 and 2021-2022 will be treated as responsive to Request for Production No. 2 so as to avoid the need for the Secretary's office to review hundreds of documents.

REQUEST FOR PRODUCTION NO. 2: All documents and communications referencing or discussing the timing, processes, or procedures used for assigning voters to new congressional districts following congressional redistricting in Alabama in 2011-2012, and 2021-2022.

RESPONSE: As set out in Secretary Allen's March 27, 2023 responses to the *Milligan* Plaintiffs' [Third] Request for Production of Documents (which were served on all three sets of Plaintiffs), Secretary Allen undertook a search for emails

responsive to the second and sixth requests therein. Two different kinds of searches were needed. The details which follow are from the Secretary's IT staff.

A Veritas proximity search was conducted on accounts for Brent Beal, David Brewer, Jean Brown, Jeff Elrod (Merrill administration), Hugh Evans, Clay Helms, Emily Marsal, John Merrill, and Adam Thompson. The following searches were conducted:

- "1971 120"~6 (1971 within 6 words of 120)
- "1965 564"~3 (1965 within 3 words of 564)
- 11-518
- 02-57
- 92-63
- 81-929
- preclear* (word starts with preclear)
- redistrict* (word starts with redistrict)
- reapportion* (word starts with reapportion)
- "voting rights" AND "rights section"~5 AND "voting section"~6 (the phrase "voting rights" AND rights within 5 words of section AND voting within 6 words of section)

Additionally, manual searches within Outlook were conducted on accounts for Loral Bunn, Jeff Elrod (Allen administration), and Sarah

Telofski. Outlook would not allow for proximity searches and dashes did not function well. The search terms were adjusted to:

- “1971*120”
- “1965*564”
- “11*518”
- “02*57”
- “92*63”
- “81*929”
- “preclear”
- “redistrict”
- “reapportion”
- “voting rights section”

Outlook search terms function as if they are preceded and followed by wildcards.

These two searches returned nearly 10,000 emails, which approximately doubled when loaded into the Attorney General’s e-discovery platform. An earlier search returned more than 80,000 responses for “maps” and more than 25,000 responses for “justice.” Accordingly, those search terms were not used (and are not reflected above), as it would be unduly burdensome to review these documents for

potential production given the Secretary's limited involvement in preclearance (which the second and sixth *Milligan* requests concerned).

The Secretary also ran searches on two network storage servers as follows, again in the words of the Secretary's IT staff.

We used a regular expression for the file search tool. We made that regular expression to be as close as possible to the terms used in the Veritas email search.

The criteria were as follows

- 1971 and 120 (1 to 6 words apart) OR
- 1965 and 564 (1 to 3 words apart) OR
- 11-518 OR
- 02-57 OR
- 92-63 OR
- 81-929 OR
- Preclear* OR
- Redistrict* OR
- Reapportion* OR
- "Voting rights" and section (1 to 5 words apart)

Additionally, the Secretary's office eliminated some large files which it believed to be non-responsive. The search of the first network storage server returned nearly

2,000 documents, including duplicates. When duplicates identified by the Attorney General's e-discovery platform are excluded, the search of the first network storage server returned approximately 800 documents. The search of the second network storage server, which includes back-ups of documents and emails, returned nearly 17,000 documents once loaded into the Attorney General's e-discovery platform (excluding duplicates identified by the software).

Additionally, the Secretary checked for paper documents in the file cabinets and closet where such documents, if they exist, would most likely be. A couple of boxes worth of potentially responsive documents were located, scanned, and loaded for review. Further, after having ascertained that responsive paper documents are highly unlikely to be stored at the Secretary's warehouse, the Secretary identified a new pallet of boxes and ascertained that one box of potentially responsive documents merited review. Those documents were scanned and loaded for review.

Review of the collected documents is on-going, and many responsive documents have been found. More than eighteen thousand documents remain to be reviewed. Under the circumstances, the Secretary objects to undertaking new searches in response to this request as unduly burdensome because the burden would outweigh the importance and likely benefit of any additional discovery. *See* FED. R. CIV. P. 26(b)(1).

Non-privileged, responsive documents will be produced on a rolling basis, as described above.

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Counsel for Secretary Allen

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2023, I served the foregoing on all counsel of record by electronic mail.

s/ James W. Davis

Counsel for Secretary Allen

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

EVAN MILLIGAN, et al.,)	
)	
<i>Plaintiffs,</i>)	
)	
v.	)	Case No.: 2:21-cv-01530-AMM
)	
WES ALLEN, in his official	)	THREE-JUDGE COURT
capacity as Secretary of State of)	
Alabama, et al.,)	
)	
<i>Defendants.</i>)	

MARCUS CASTER, et al.,)	
)	
<i>Plaintiffs,</i>)	
)	
v.	)	Case No.: 2:21-cv-01536-AMM
)	
WES ALLEN, in his official)	
Capacity as Alabama Secretary of)	
State, et al.,)	
)	
<i>Defendants.</i>)	

SECRETARY OF STATE WES ALLEN’S OBJECTIONS AND RESPONSES TO THE
MILLIGAN AND CASTER PLAINTIFFS’ FIFTH REQUEST FOR
PRODUCTION OF DOCUMENTS

Pursuant to FED. R. CIV. P. 26 and 34, Alabama Secretary of State Wes Allen, sued in his official capacity, hereby responds to the *Milligan* and *Caster* Plaintiffs’ fifth request for production of documents as set out below.

General Statement

Secretary Allen has relied on the information presently available to him. 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 responses 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); and "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). Moreover, "the good faith

of a state legislature must be presumed,” *Miller v. Johnson*, 515 U.S. 900, 915 (1995). *See also*, *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. ___, ___ (May 23, 2024).

General Objections

Secretary Allen objects to each of the requests for production to the extent they seek information or documents protected by the attorney client privilege, the work product doctrine, the joint defense or common interest privilege, or any other applicable privilege, exemption, or immunity.

To the extent that any request seeks information or documents from Secretary Allen or his staff based upon previous service as a Member of the Legislature, he asserts the Legislative Privilege. All responses provided herein are provided by Secretary Allen in his role as Secretary of State, and all documents are limited to those of the Secretary of State.

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

Secretary Allen objects to the requests for production, including the Definitions and Instructions, to the extent they seek to impose any meaning or

interpretation onto the requests other than that evident from the plain and ordinary meaning of the words used therein.

Further, Secretary Allen objects to the production of any documents not possessed by the Secretary of State's office because such requests are overbroad and unduly burdensome, the burden outweighs the importance and likely benefit of the discovery, and the requests are not proportional to the needs of the case. See Fed. R. Civ. P. 26(b)(1). Unless otherwise specifically indicated, the Secretary has undertaken no investigation into what, if any, responsive information or documents may be held by experts, his litigation counsel, members or employees of the Alabama Legislature, or elsewhere outside the Secretary's office.

Secretary Allen objects to each of the requests for production to the extent they seek information already in the possession of the Plaintiffs, or otherwise equally available to the Plaintiffs.

Secretary Allen objects to each of the requests for production to the extent they seek information that is not relevant to any claim or defense presently before the Court and thus are not reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b).

REQUEST FOR PRODUCTION NO. 1: All documents constituting or referring to any communication between Defendants and any individuals and/or entities (including but not limited to legislators, members of Congress, political party

entities or officials, interest groups, consultants, individuals in the Legislative Reapportionment Office, and their employees and/or agents), concerning the drawing of congressional districts in 2023, including those adopted in the Legislative Remedial Plan. This Request includes all maps, draft maps, memoranda, reports, analyses, correspondence, or other documents, including electronically stored information.

RESPONSE: The Secretary of State's office was not involved in the drawing of Alabama congressional districts in 2023. Accordingly, Secretary Allen objects to undertaking a search for potentially responsive documents on grounds that the request is overbroad and unduly burdensome, the burden would outweigh the importance and likely benefit of the discovery, and the request is not proportional to the needs of the case. See FED. R. CIV. P. 26(b)(1). Secretary Allen further objects to this request on grounds of legislative privilege, attorney client privilege, the joint defense doctrine/attorney client privilege, common interest doctrine/attorney client privilege, the work product doctrine, and deliberative process privilege.

To the extent this request seeks documents in the custody or control of the Secretary's litigation counsel, Secretary Allen objects to this request on grounds of legislative privilege, attorney client privilege, the joint defense doctrine/attorney client privilege, common interest doctrine/attorney client privilege, the work product doctrine, deliberative process privilege, and any other applicable privilege.

REQUEST FOR PRODUCTION NO. 2: All documents concerning any analyses or evaluations that were conducted, reviewed, or relied upon in drawing, reviewing, adopting, or approving the congressional districts adopted in the Legislative Remedial Plan or in considering alternative 2023 congressional

districting plans, including but not limited to any analyses of racially polarized voting, functional analyses, performance analyses, voting patterns, or communities of interest. This Request includes, but is not limited to, all documents and communications concerning whether to conduct or use any such analyses or evaluations, regardless of whether they were actually used or conducted, including but not limited to the materials relied upon to determine which districts were the subject of any such analyses or evaluations, in connection with drawing the congressional districts adopted in the Legislative Remedial Plan.

RESPONSE: The Secretary of State's office was not involved in the drawing of Alabama congressional districts in 2023 and has no knowledge of what, if any "analyses or evaluations that were conducted, reviewed, or relied upon in drawing, reviewing, adopting, or approving the [2023] congressional districts." Accordingly, Secretary Allen objects to undertaking a search for potentially responsive documents on grounds that the request is overbroad and unduly burdensome, the burden would outweigh the importance and likely benefit of the discovery, and the request is not proportional to the needs of the case. See FED. R. CIV. P. 26(b)(1). Secretary Allen further objects to this request on grounds of legislative privilege, attorney client privilege, the joint defense doctrine/attorney client privilege, common interest doctrine/attorney client privilege, the work product doctrine, and deliberative process privilege.

To the extent this request seeks documents in the custody or control of the Secretary's litigation counsel, Secretary Allen objects to this request on grounds of legislative privilege, attorney client privilege, the joint defense doctrine/attorney

client privilege, common interest doctrine/attorney client privilege, the work product doctrine, deliberative process privilege, and any other applicable privilege.

REQUEST FOR PRODUCTION NO. 3: All documents concerning any and all criteria used in drawing and/or approving the Legislative Remedial Plan and any other 2023 congressional districting plan passed by the Committee, full Alabama State Senate, or full Alabama House of Representatives.

RESPONSE: Per correspondence from Plaintiffs' counsel dated April 13, 2024, this request is not directed to Secretary Allen.

REQUEST FOR PRODUCTION NO. 4: All documents relating to any of the 2023 public special session hearings held by the Committee. This Request includes, but is not limited to, hearing transcripts, all draft maps, documents shared between the Committee Chairs and actual or potential witnesses, and all communications regarding those topics, including electronically stored information.

RESPONSE: Per correspondence from Plaintiffs' counsel dated April 13, 2024, this request is not directed to Secretary Allen.

REQUEST FOR PRODUCTION NO. 5: All documents, including, but not limited to, transcripts, minutes, or notes, including electronically stored information, recording or referencing the conduct of any meetings of any legislative committee or subcommittee in connection with or in furtherance of the adoption of a 2023 congressional districting plan, including for the legislative findings included in the Legislative Remedial Plan.

RESPONSE: Per correspondence from Plaintiffs' counsel dated April 13, 2024, this request is not directed to Secretary Allen.

REQUEST FOR PRODUCTION NO. 6: All voter files from the 2024 Alabama elections as of Election Day for each federal election, including, but not

limited to the primary election, general election, and run-off election, including, but not limited to, voter registration and other files that indicate registration status, race, and voting histories. These files should be presented in .csv or another machine-readable format.

RESPONSE: To the extent that “voter files” includes any document or information other than the voter registration database, Secretary Allen objects to this request as unduly burdensome and not proportional to the needs of the case. Secretary Allen further objects to the request to the extent that it seeks voters’ personally identifying information. Subject to the Court’s protective order, Secretary Allen will produce archives of the voter registration database around the times of the 2024 primary and runoff elections with certain personally-identifying information omitted.

Respectfully Submitted,

Steve Marshall
Attorney General

/s/ James W. Davis

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CERTIFICATE OF SERVICE

I certify that on June 3, 2024, I served the foregoing by electronic mail to all counsel of record for the Plaintiffs and for the Legislators.

/s/ James W. Davis

Counsel for Secretary Allen