

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.)	
)	

**SEN. JIM MCCLENDON AND REP. CHRIS PRINGLE’S
OBJECTIONS AND RESPONSES TO PLAINTIFFS’
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Come now Sen. Jim McClendon and Rep. Chris Pringle in their capacities as Senate and House Chairs of the Alabama Permanent Legislative Committee on Reapportionment (collectively, “the Committee Chairs”), and object and respond 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. The Committee Chairs object to the requests for production, including the instructions and definitions, to the extent they purport to impose upon them 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 limiting the foregoing objection, the Committee Chairs specifically object 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. The Committee Chairs recognize that discovery with respect to the preliminary injunction proceedings closes on December 17, 2021, and has produced responsive documents before that date.
3. The Committee Chairs object 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 Committee Chairs object to 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 Committee Chairs object to 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 Committee Chairs object to the production of documents not possessed by them 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. They further objects to the requests for production to the extent they seek information not within their possession, custody, or control, on grounds that such requests are overly broad and would subject him to undue burden. The Committee Chairs expressly rejects any theory that the files of their law firm are in the possession, custody, or control of each of its clients.
7. The Committee Chairs object 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 Committee Chairs object to 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 Committee Chairs do 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 Committee Chair'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 Committee Chairs have produced the Section 5 Submission for Act 2002-57—RC 043723 to 044003.

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 Committee Chairs have produced:

- the 2011 Congressional districts and related reports—RC 000012-000271,
- the May 2021 Reapportionment Committee Guidelines—RC 044593-044599,
- transcripts of the Reapportionment Committee’s hearings, and related documents—RC 044681-045523,

- the minutes and related documents from the Reapportionment Committee's May 2021 meeting and the draft minutes and related document from the Committee's October 2021 meeting—RC 044462-044592;
- talking point—RC 045524-045538
- emails from the Reapportionment Office to the Committee Chairs—RC 045594-045868, and
- unprivileged emails from the Reapportionment Committee's counsel to the Committee Chairs—RC 045594-045868.

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 Committee Chairs have produced:

- maps and related reports for plans that were introduced in a committee hearing or on the floor of the Senate or House—RC 000001-043722 & RC 045539-045565,
- racial polarization/district functionality analyses for legislative and State Board of Education districts—RC 045566-045593, and
- have agreed with *Milligan* counsel to discuss, after the preliminary injunction issue is resolved, production of five plans that are in the Reapportionment Committee's redistricting system and were not introduced in a committee meeting or on the floor of either house.

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 Committee Chairs have produced the Guidelines, *supra*.

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 Committee Chair have produced racial polarization/district functionality analyses for legislative and State Board of Education districts, *supra*.

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 Committee Chairs have produced :

- the minutes and related documents of the May and October 2021 meetings of the Reapportionment Committee, *supra*,
- responsive documents from Sen. Jim McClendon's notebook—RC 046003-046207, and
- responsive documents from Rep. Pringle's satchel—RC 045869-046002.

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: Please see the response of Secretary Merrill, which the Committee Chairs adopt.

Respectfully submitted this 20th day of December, 2021

Respectfully submitted,

s/ Dorman Walker

OF COUNSEL:

Dorman Walker (ASB-9154-R81J)
Email: dwalker@balch.com
BALCH & BINGHAM LLP
Post Office Box 78 (36101)
105 Tallapoosa Street, Suite 200
Montgomery, AL 36104
Telephone: (334) 269-3138

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2021, I electronically served the foregoing on all counsel of record.

s/ Dorman Walker

Counsel for Sen. Jim McClendon and
Rep. Chris Pringle

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

EVAN MILLIGAN, *ET AL.*,

Plaintiffs,

V.

WES ALLEN, *ET AL.*,

Defendants.

Civil Action No: 2:21:cv-01530-AMM

RESPONSES OF THE REDISTRICTING COMMITTEE CHAIRS
TO THE *MILLIGAN* PLAINTIFFS'
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to FED. R. CIV. P. 26 and 36, the House and Senate Chairs of the Permanent Legislative Committee on Reappointment, Rep. Pringle and **Sen. Livingston (“the Chairs”)** respond as follow to the *Milligan Plaintiffs’* First Set of Requests for Production:

General Objections

The Chairs object 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.

The Chairs object **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, the Chairs object to the production of documents not possessed by the them or the Reapportionment 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 Chairs have undertaken no investigation into what, if any, responsive information or documents may be held by experts, litigation counsel, members or employees of the Alabama Legislature, or elsewhere outside Reapportionment Office.

Similarly, the Chairs object 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.

The Chairs further object **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.

The Chairs object to each requests for production to the extent it seeks information already in the possession of the Plaintiffs, or otherwise equally available to the Plaintiffs. The Chairs specifically object to the demand that

they produce documents for inspection or copies within 30 days after service. See FED. R. CIV. P. 34(b)(2)(A), 5 (B). The Chairs will produce documents on a rolling basis. As applicable, privilege logs will be produced on a rolling basis, corresponding with the document productions.

The Chairs object 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.

The Chairs object 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).

DOCUMENTS REQUESTED

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: The Chairs object to this request on grounds of Legislative Privilege to the extent that it seeks a response involving any Member of the Legislature (**or that Member's staff or agents**) who has not waived Legislative immunity.

The Chairs object to this request to the extent that it seeks documents protected by the attorney-client privilege or work product doctrine.

The Chairs object 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.

The Chairs object 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 Chairs **further object on grounds that there was no “decision to maintain congressional district 7 as a majority-Black district.”**

Without waiving these objections the Chairs responds that non-privileged documents responsive to Request for Production No. 1 were produced in advance of the preliminary injunction hearing, and those responses are incorporated by reference. If the Chairs locate other non-privileged responsive documents, they will supplement this response.

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: The Chairs object to this request on grounds of Legislative Privilege to the extent that it seeks a response involving any Member of the Legislature (**or that Member's staff or agents**) who has not waived Legislative immunity.

The Chairs object to this request to the extent that it seeks documents protected by the attorney-client privilege or work product doctrine.

The Chairs object 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, and those responses are incorporated by reference.

On information and belief, when Section 5 was being enforced, Section 5 submissions of new Congressional plans were made by the Attorney **General's office, which would be the best source of documents about these** submission.

Without waving these objections, to the extent the Reapportionment Office has non-privileged responsive documents, they will be produced.

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: The Chairs object to this request on grounds of Legislative Privilege to the extent that it seeks a response involving any Member of the Legislature (**or that Member's staff or agents**) who has not waived Legislative immunity.

The Chairs object to this request to the extent that it seeks documents protected by the attorney-client privilege or work product doctrine.

The Chairs object 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.

The Chairs object 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, and those responses are incorporated by reference.

The Chairs object on grounds that **there was no “decision to maintain congressional district 7 as a majority-Black district.”**

Without waving these objections, to the extent the Reapportionment Office has non-privileged responsive documents, they will be produced.

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: The Chairs object to this request on grounds of Legislative Privilege to the extent that it seeks a response involving any Member of the Legislature (**or that Member's staff or agents**) who has not waived Legislative immunity.

The Chairs object to this request to the extent that it seeks documents protected by the attorney-client privilege or work product doctrine.

The Chairs object 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, and those responses are incorporated by reference.

Without waiving these objections, the Chairs will produce any non-privileged responsive documents.

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: The Chairs object to this request on grounds of Legislative Privilege to the extent that it seeks a response involving any Member of the Legislature **(or that Member's staff or agents) who has not waived Legislative immunity.**

The Chairs object to this request to the extent that it seeks documents protected by the attorney-client privilege or work product doctrine.

The Chairs object 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, and those responses are incorporated by reference.

Without waiving these objections, the Chairs will produce any non-privileged responsive documents.

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: The Chairs object to this request on grounds of Legislative Privilege to the extent that it seeks a response involving any Member of the Legislature **(or that Member's staff or agents) who has not waived Legislative immunity.**

The Chairs object to this request to the extent that it seeks documents protected by the attorney-client privilege or work product doctrine.

The Chairs object 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, the Chairs will produce any non-privileged responsive documents.

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: The Chairs object to this request on grounds of Legislative Privilege to the extent that it seeks a response involving any Member of the Legislature **(or that Member's staff or agents) who has not waived Legislative immunity.**

The Chairs object to this request to the extent that it seeks documents protected by the attorney-client privilege or work product doctrine.

The Chairs object 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

Without waiving these objections, the Chairs will produce any non-privileged responsive documents.

Respectfully submitted this the 18th day of April, 2023.

s/ Dorman Walker

Counsel for Rep. Chris Pringle and
Sen. Steve Livingston in their official
capacities as House Chair and Senate
Chair of the Permanent Legislative
Committee on Reappointment

OF COUNSEL:

Dorman Walker (ASB-9154-R81J)
Email: dwalker@balch.com
BALCH & BINGHAM LLP
Post Office Box 78 (36101)
105 Tallapoosa Street, Suite 200
Montgomery, AL 36104
Telephone: (334) 269-3138

Christina Rossi Pantazis (ASB-6408-Q40P)
Email: cpantazis@balch.com
BALCH AND BINGHAM
1901 Sixth Avenue North, Ste. 1500
Birmingham, AL 35203

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2023, I served the foregoing on
counsel of record by email.

LaTisha Gotell Faulks
Kaitlin Welborn
ACLU OF ALABAMA
P.O. Box 6179
Montgomery, AL 36106
334-265-2754
Email:
tgfaulks@aclualabama.org
kwelborn@aclualabama.org

Dayton Campbell-Harris
Julia A. Ebernstein

Alexander Barrett Bowdre
James W. Davis
Andrew Reid Harris
Edmund Gerard LaCour, Jr
Misty Shawn Fairbanks
Messick
Benjamin Matthew Seiss
Brenton Merrill Smith
OFFICE OF THE ATTORNEY
GENERAL OF ALABAMA
P.O. Box 300152
501 Washington Avenue

Davin Rosborough
American Civil Liberties Union
Foundation
125 Broad Street
New York, NY 10004
201-549-2686
Fax: 800-922-4851
Email:
dcampbell-harris@aclu.org
jebenstein@aclu.org
drosborough@aclu.org

Montgomery, AL 36130
334-242-7300
Fax: 334-353-8400
Email:
Barrett.Bowdre@AlabamaAG.gov
Jim.Davis@AlabamaAG.gov
Reid.Harris@AlabamaAG.gov
Edmund.Lacour@AlabamaAG.gov
Misty.Messick@AlabamaAG.gov
Ben.Seiss@AlabamaAG.gov
Brenton.Smith@AlabamaAG.gov

Anthony Ashton
Anna Kathryn Barnes
NAACP
4805 Mount Hope Drive
Baltimore, MD 21215
410-580-5777
Fax: 205-855-5784
Email:
abarnes@naaconet.org
aashton@naacpnet.org

*Attorneys for Defendant Secretary
of State Wes Allen*

Leah C. Aden
Ashley Burrell
Brittany Carter
Stuart Naifeh
Kathryn Carden Sadasivan
NAACP Legal Defense and
Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, NY 10006
646-761-0596
Fax: 212-226-7592
Email:
laden@naacpldf.org
aburrell@naacpldf.org
bcarter@naacpldf.org
snaifeh@naacpldf.org

ksadasivan@naacpldf.org

Tanner Lockhead
Deuel Ross
NAACP Legal Defense and
Educational Fund Inc.
700 14th Street NW
6th Floor
Washington, DC 20005
202-682-1300
Fax: 202-682-1312
Email:
tlockhead@naacpldf.org
dross@naacpldf.org

Blayne R. Thompson
HOGAN LOVELLS US LLP
609 Main Street, Suite 4200
Houston, TX 77002
713-632-1429
Fax: 713-632-1401
Email:
blayne.thompson@hoganlovells.com

Harmony R. Gbe
Michael Lovejoy Turrill
HOGAN LOVELLS US LLP
1999 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
310-785-4649
Fax: 310-785-4601
Email:
harmony.gbe@hoganlovells.com
Michael.Turrill@hoganlovells.com

David Dunn
HOGAN LOVELLS US LLP
390 Madison Avenue
New York, NY 10017

221-918-3515
Fax: 212-918-3100
Email:
david.dunn@hoganlovells.com

Jessica L. Ellsworth
Shelita M. Stewart
HOGAN LOVELLS US LLP
555 13th Street NW
Washington, DC 20004
202-637-5886
Fax: 202-637-5910
Email:
Jessica.ellsworth@hoganlovells.com
shelita.stewart@hoganlovells.com

Sidney Monroe Jackson
Nicki Leili Lawsen
WIGGINS, CHILDS, PANTAZIS,
FISHER & GOLDFARB, LLC
301 19th Street North
Birmingham, AL 35203
205-314-0535
Fax: 205-314-0535
Email:
sjackson@wigginschilds.com
nlawsen@wigginschilds.com

Attorneys for Plaintiffs

s/ Dorman Walker

Of Counsel

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

MARCUS CASTER, et al.,
Plaintiffs,

vs.

No. 2:21-cv-01536-AMM

WES ALLEN, et al.,
Defendants.

EVAN MILLIGAN, et al.,
Plaintiffs,

vs.

No 2:21-cv-01530-AMM

WES ALLEN, et al.,
Defendants.

**DEFENDANTS' RESPONSE TO PLAINTIFFS' FIFTH
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Fed. R. Civ. P. 26 and 36, the House and Senate Chairs of the Permanent Legislative Committee on Reappointment, Sen. Livingston, and Rep. Pringle ("Defendants") respond to the Plaintiffs' Fifth Request for Production of Documents:

General Objections

1. Defendants object to the requests for production, including the instructions and definitions, to the extent they purport to impose upon them 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. Defendants object to the requests for production, including the instructions and definitions, to the extent they seek to impose any meaning

or interpretation 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 word used therein.

3. Defendants object to 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.

4. Defendants object to the requests for production to the extent they seek to discover the mental impressions, conclusions, opinions, legal strategies, or legal theories of attorneys for or his non-attorney employees working under their supervision. Such information is privileged as attorney work-product. See *Hickman v. Taylor*, 329 U.S. 495 (1947).

5. Defendants object to 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.

6. Defendants object to 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).

7. By answering or otherwise responding to these discovery requests, Defendants do 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.

8. This production is being made to the *Milligan* and *Caster* Plaintiffs.

Reservation of Rights

Defendants' responses to these requests for production are subject 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 interrogatories; and,

4. The right to revise, correct, supplement, clarify, and amend the responses set forth herein consistent with the Federal Rules of Civil Procedure.

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: Subject to and without waiving objections for attorney-client privilege, the work-product doctrine, the joint-defense or common-interest privilege, or any other applicable privilege, and legislative privileges of legislators who have not waived their privilege, see Milligan-RC 054334, 045335, 054339, 045562, 054836, 054978, and 044097, 049854-054189, 054190-200, 054216-055230, 055231-055253, and 055254-055741.

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: Subject to and without waiving objections for attorney-client privilege, the work-product doctrine, the joint-defense or common-interest privilege, or any other applicable privilege, and legislative privileges of legislators who have not waived their privilege, see the documents produced in response to the fifth request for production of documents, including Milligan-RC 049825-049853.

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: See the previously produced Reapportionment Committee Redistricting Guidelines, May 5, 2021, https://alison.legislature.state.al.us/files/pdf/2021-Reapportionment/Notices/Reapportionment_Guidelines_for_Redistricting.pdf and the orders of the Court.

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: Subject to and without waiving objections for attorney-client privilege, the work-product doctrine, the joint-defense or common-interest privilege, or any other applicable privilege, and legislative privileges of legislators who have not waived their privilege, see Milligan-RC 055742-057452.

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: Subject to and without waiving objections for attorney-client privilege, the work-product doctrine, the joint-defense or common-interest privilege, or any other applicable privilege, and legislative privileges of legislators who have not waived their privilege, see Milligan-RC 055742--057452.

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: These Defendants do not have responsive documents.

Respectfully submitted this this 3rd day of June, 2024.

/s/ Dorman Walker

Dorman Walker (ASB-9154-R81J)

BALCH & BINGHAM LLP

Post Office Box 78 (36101)

455 Dexter Avenue

Montgomery, AL 36104

Telephone: (334) 269-3138

Email: dwalker@balch.com

Michael Taunton (ASB-6853-H00S)

BALCH & BINGHAM LLP

1901 Sixth Avenue North, Suite 1500

Birmingham, AL 35203

Telephone: (205) 226-3451

Email: mtaunton@balch.com

***Counsel for Sen. Livingston, and
Rep. Pringle***

CERTIFICATE OF SERVICE

I certify that on June 3, 2024, I served the foregoing on all counsel of record by email.

/s/*Dorman Walker*

OF COUNSEL