

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

CIVIL ACTION NO.: 2:21-cv-01530-AMM

EVAN MILLIGAN, et al.,

Plaintiffs,

v.

WES ALLEN, et al.,

Defendants.

CIVIL ACTION NO.: 2:21-cv-01536-AMM

MARCUS CASTER, et al.,

Plaintiffs,

v.

WES ALLEN, et al.,

Defendants.

DEPOSITION TESTIMONY OF:

CHRISTOPHER BROWN

June 18, 2024

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| <p style="text-align: right;">Page 2</p> <p>1 S T I P U L A T I O N S</p> <p>2 IT IS STIPULATED AND AGREED</p> <p>3 by and between the parties through their</p> <p>4 respective counsel that the deposition of</p> <p>5 CHRISTOPHER BROWN may be taken before</p> <p>6 Lane C. Butler, a Court Reporter and</p> <p>7 Notary Public for the State at Large, at</p> <p>8 the law offices of Wallace, Jordan,</p> <p>9 Ratliff & Brandt, 800 Shades Creek</p> <p>10 Parkway, Suite 400, Birmingham, Alabama,</p> <p>11 on the 18th day of June, 2024, commencing</p> <p>12 at approximately 9:15 a.m. Central.</p> <p>13 IT IS FURTHER STIPULATED</p> <p>14 AND AGREED that the signature to and the</p> <p>15 reading of the deposition by the witness</p> <p>16 is waived, the deposition to have the</p> <p>17 same force and effect as if full</p> <p>18 compliance had been had with all laws and</p> <p>19 rules of Court relating to the taking of</p> <p>20 the depositions.</p> <p>21 IT IS FURTHER STIPULATED</p> <p>22 AND AGREED that it shall not be necessary</p> <p>23 for any objections to be made by counsel</p> | <p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR THE MILLIGAN PLAINTIFFS (via Zoom):</p> <p>4</p> <p>5 Dayton Campbell-Harris, Esq.</p> <p>6 ACLU of NEW YORK</p> <p>7 125 Broad Street, 18th Floor</p> <p>8 New York, New York 10004</p> <p>9 dcampbell-harris@aclu.org</p> <p>10</p> <p>11 Kathryn Sadasivan, Esq.</p> <p>12 Stuart Naifeh, Esq.</p> <p>13 Brittany Carter, Esq.</p> <p>14 Colin Burke, Esq.</p> <p>15 NAACP LEGAL DEFENSE FUND</p> <p>16 40 Rector Street, Fifth Floor</p> <p>17 New York, New York 10006</p> <p>18 ksadasivan@naacpldf.org</p> <p>19</p> <p>20 Nicki Lawsen, Esq.</p> <p>21 WIGGINS CHILDS PANTAZIS FISHER & GOLDFARB</p> <p>22 301 19th Street North</p> <p>23 Birmingham, Alabama 35203</p> |
| <p style="text-align: right;">Page 3</p> <p>1 to any questions except as to form or</p> <p>2 leading questions and that counsel for</p> <p>3 the parties may make objections and</p> <p>4 assign grounds at the time of trial or at</p> <p>5 the time said deposition is offered in</p> <p>6 evidence, or prior thereto.</p> <p>7 In accordance with the Federal</p> <p>8 Rules of Civil Procedure, I, Lane C.</p> <p>9 Butler, am hereby delivering to Dayton</p> <p>10 Campbell-Harris, Esq., the original</p> <p>11 transcript of the oral testimony taken</p> <p>12 the 18th day of June, 2024.</p> <p>13 Please be advised that this is</p> <p>14 the same and not retained by the Court</p> <p>15 Reporter, nor filed with the Court.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> | <p style="text-align: right;">Page 5</p> <p>1 A P P E A R A N C E S (continued)</p> <p>2</p> <p>3 FOR THE CASTER PLAINTIFFS (via Zoom):</p> <p>4</p> <p>5 Makeba Rutahindurwa, Esq.</p> <p>6 ELIAS LAW GROUP</p> <p>7 1700 Seventh Avenue</p> <p>8 Suite 2100</p> <p>9 Seattle, Washington 98101</p> <p>10 mrutahindurwa@elias.law</p> <p>11</p> <p>12</p> <p>13 FOR THE DEPONENT:</p> <p>14</p> <p>15 Albert Jordan, Esq.</p> <p>16 Wallace, Jordan, Ratliff & Brandt</p> <p>17 800 Shades Creek Parkway</p> <p>18 Suite 400</p> <p>19 Birmingham, Alabama 35209</p> <p>20 alj@wallacejordan.com</p> <p>21</p> <p>22</p> <p>23</p> |

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| <p style="text-align: right;">Page 6</p> <p>1 A P P E A R A N C E S (continued)</p> <p>2</p> <p>3 FOR THE NON-PARTY LEGISLATORS (via Zoom):</p> <p>4</p> <p>5 Christopher Weller, Esq.</p> <p>6 Mitchell Sikes, Esq.</p> <p>7 CAPELL & HOWARD</p> <p>8 150 South Perry Street</p> <p>9 Montgomery, Alabama 36102</p> <p>10 chris.weller@chlaw.com</p> <p>11</p> <p>12</p> <p>13 FOR THE LEGISLATIVE INTERVENORS (via</p> <p>14 Zoom):</p> <p>15</p> <p>16 Michael Taunton, Esq.</p> <p>17 Dorman Walker, Esq.</p> <p>18 BALCH & BINGHAM</p> <p>19 1901 Sixth Avenue North, Suite 1500</p> <p>20 Birmingham, Alabama 35203</p> <p>21 mtaunton@balch.com</p> <p>22</p> <p>23</p> | <p style="text-align: right;">Page 8</p> <p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION BY: PAGE NO.</p> <p>4 Mr. Campbell-Harris 10</p> <p>5 Mr. Jordan 155</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 E X H I B I T S</p> <p>11</p> <p>12 FOR THE PLAINTIFFS:</p> <p>13 Ex 1 Subpoena 85</p> <p>14 Ex 2 Text Messages 88</p> <p>15 Ex 3 Legislative Privilege 105</p> <p>16 Correspondence Documents</p> <p>17</p> <p>18 FOR THE DEPONENT:</p> <p>19 RSS 1 RedState Strategies Website 155</p> <p>20 Documents</p> <p>21</p> <p>22</p> <p>23</p> |
| <p style="text-align: right;">Page 7</p> <p>1 A P P E A R A N C E S (continued)</p> <p>2</p> <p>3 FOR THE STATE OF ALABAMA (via Zoom):</p> <p>4</p> <p>5 James Davis, Esq.</p> <p>6 ALABAMA ATTORNEY GENERAL'S OFFICE</p> <p>7 501 Washington Avenue</p> <p>8 Montgomery, Alabama 36104</p> <p>9 jim.davis@alabamaag.gov</p> <p>10</p> <p>11</p> <p>12 ALSO PRESENT (via Zoom):</p> <p>13</p> <p>14 Anusha Das</p> <p>15 Nina McKay</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> | <p style="text-align: right;">Page 9</p> <p>1 I, Lane C. Butler, a Court</p> <p>2 Reporter and Notary Public, State of</p> <p>3 Alabama at Large, acting as Notary,</p> <p>4 certify that on this date, pursuant to</p> <p>5 the Federal Rules of Civil Procedure and</p> <p>6 the foregoing stipulation of counsel,</p> <p>7 there came before me at the law offices</p> <p>8 of Wallace, Jordan, Ratliff & Brandt, 800</p> <p>9 Shades Creek Parkway, Suite 400,</p> <p>10 Birmingham, Alabama, commencing at</p> <p>11 approximately 9:15 a.m., on the 18th day</p> <p>12 of June, 2024, CHRISTOPHER BROWN, witness</p> <p>13 in the above cause, for oral examination,</p> <p>14 whereupon the following proceedings were</p> <p>15 had:</p> <p>16</p> <p>17 CHRISTOPHER BROWN,</p> <p>18 having first been duly sworn,</p> <p>19 was examined and testified as follows:</p> <p>20</p> <p>21 THE COURT REPORTER: Thank you.</p> <p>22 Attorneys, usual stipulations?</p> <p>23 MR. CAMPBELL-HARRIS: Yes.</p> |

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| <p style="text-align: right;">Page 10</p> <p>1 MR. JORDAN: Yes.</p> <p>2</p> <p>3 EXAMINATION BY MR. CAMPBELL-HARRIS:</p> <p>4 Q. All right. Good morning, Mr.</p> <p>5 Brown. Thank you again for being here</p> <p>6 today. Can you please state and spell</p> <p>7 your name for the record.</p> <p>8 A. Christopher Brown,</p> <p>9 C-H-R-I-S-T-O-P-H-E-R, Brown, B-R-O-W-N.</p> <p>10 Q. Thank you. My name is Dayton</p> <p>11 Campbell-Harris, and I'm an attorney for</p> <p>12 the plaintiff here in Milligan v. Allen.</p> <p>13 Mr. Brown, have you ever been</p> <p>14 deposed?</p> <p>15 A. Not to my knowledge.</p> <p>16 Q. Okay. We're going to walk</p> <p>17 through some of the normal courses of</p> <p>18 business and go over a few logistical</p> <p>19 points concerning depositions before we</p> <p>20 jump into the substance of today's</p> <p>21 deposition. Is that okay?</p> <p>22 A. Sure.</p> <p>23 Q. Okay. So everything is being</p> | <p style="text-align: right;">Page 12</p> <p>1 question I ask, just say so, please, and</p> <p>2 I will try to explain or rephrase the</p> <p>3 question so you understand it. And if</p> <p>4 you answer a question, I will assume you</p> <p>5 understood it. Okay?</p> <p>6 A. Okay.</p> <p>7 Q. If you need a break at any</p> <p>8 point, please just let me know, and we'll</p> <p>9 do our best to accommodate you as long as</p> <p>10 there is no question pending. If there's</p> <p>11 a question pending, then you will need to</p> <p>12 answer before we take the break. Okay?</p> <p>13 A. Understood.</p> <p>14 Q. Did you take any medications</p> <p>15 today or this morning that might impact</p> <p>16 your ability to answer any questions</p> <p>17 truthfully or accurately?</p> <p>18 A. No.</p> <p>19 Q. Okay. And is there any reason</p> <p>20 why you might not be able to understand</p> <p>21 or respond accurately and truthfully to</p> <p>22 my questions today?</p> <p>23 A. Can you -- I mean, that -- I</p> |
| <p style="text-align: right;">Page 11</p> <p>1 transcribed today, so we all need to</p> <p>2 speak clearly, make sure we have the</p> <p>3 right microphones on, and avoid speaking</p> <p>4 over one another. Okay?</p> <p>5 A. Okay.</p> <p>6 Q. Okay. And we have a court</p> <p>7 reporter here. She is transcribing our</p> <p>8 conversation, so please make sure that</p> <p>9 all your responses are verbal because the</p> <p>10 court reporter cannot take down nods,</p> <p>11 grunts, or gestures. Does that make</p> <p>12 sense?</p> <p>13 A. Makes sense.</p> <p>14 Q. Perfect. And there are other</p> <p>15 attorneys in attendance over Zoom for</p> <p>16 other parties. Your counsel has the</p> <p>17 right to object to the form of my</p> <p>18 questions as we go. But unless your</p> <p>19 attorney instructs you otherwise, you</p> <p>20 must still answer my question. Does that</p> <p>21 make sense?</p> <p>22 A. Yes.</p> <p>23 Q. If you don't understand a</p> | <p style="text-align: right;">Page 13</p> <p>1 don't understand that question.</p> <p>2 Q. Is there any other reason that</p> <p>3 you believe you would be unable to</p> <p>4 truthfully or accurately respond to any</p> <p>5 question --</p> <p>6 A. No.</p> <p>7 Q. -- and answer?</p> <p>8 A. No.</p> <p>9 Q. Okay. Did you do anything to</p> <p>10 prepare for today's deposition?</p> <p>11 A. Not really, no.</p> <p>12 Q. Okay.</p> <p>13 A. I mean, I reviewed the -- only</p> <p>14 thing I did was review the documents, the</p> <p>15 legal documents.</p> <p>16 Q. Okay. Which legal documents did</p> <p>17 you review?</p> <p>18 A. The quash opinions from my</p> <p>19 attorney and the non-plaintiffs'</p> <p>20 attorneys, a letter. That's it.</p> <p>21 Q. Do you mean the motion to quash</p> <p>22 and the response --</p> <p>23 A. Yes.</p> |

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| <p style="text-align: right;">Page 14</p> <p>1 Q. -- and the reply?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Did you review the</p> <p>4 attachments to any of those motions?</p> <p>5 A. Yes. I believe so.</p> <p>6 Q. Okay. And did you review any</p> <p>7 other documents in preparation for</p> <p>8 today's deposition?</p> <p>9 A. No.</p> <p>10 Q. Okay. Did you discuss today's</p> <p>11 deposition with anyone besides your</p> <p>12 attorney, Mr. Jordan?</p> <p>13 A. No.</p> <p>14 Q. Okay. And you met with Mr.</p> <p>15 Jordan to prepare for today's deposition?</p> <p>16 A. Yes.</p> <p>17 Q. When did you meet with Mr.</p> <p>18 Jordan?</p> <p>19 A. Yesterday.</p> <p>20 Q. Did you meet with him any other</p> <p>21 times?</p> <p>22 A. No.</p> <p>23 Q. And how long did the meeting</p> | <p style="text-align: right;">Page 16</p> <p>1 located in?</p> <p>2 A. It's Jefferson County, Alabama.</p> <p>3 Cities are a little unclear on where city</p> <p>4 lines go.</p> <p>5 Q. Okay. Located in Jefferson</p> <p>6 County?</p> <p>7 A. County, Alabama. Right.</p> <p>8 Q. Okay. Did you bring any</p> <p>9 documents with you to today's deposition?</p> <p>10 A. No.</p> <p>11 Q. Okay. I have some questions now</p> <p>12 about your background before we get into</p> <p>13 some of the work you do. Okay?</p> <p>14 A. Okay.</p> <p>15 Q. Where were you born?</p> <p>16 A. Bryn Mawr, Pennsylvania.</p> <p>17 Q. Okay. And in what year?</p> <p>18 A. 1972.</p> <p>19 Q. Okay. And did you grow up in</p> <p>20 Pennsylvania as well?</p> <p>21 A. First nine years.</p> <p>22 Q. Okay. Where did you go after</p> <p>23 the first nine years, or where did you</p> |
| <p style="text-align: right;">Page 15</p> <p>1 last yesterday?</p> <p>2 A. About an hour.</p> <p>3 Q. Okay. Was anyone else present</p> <p>4 at the meeting?</p> <p>5 A. Yes.</p> <p>6 Q. Who else was present?</p> <p>7 A. My ten-year-old son.</p> <p>8 Q. Okay. Was the meeting over</p> <p>9 Zoom?</p> <p>10 A. No.</p> <p>11 Q. Okay. And where are you</p> <p>12 physically located for today's</p> <p>13 deposition?</p> <p>14 A. Wallace Jordan's law office.</p> <p>15 (Discussion held off the record.)</p> <p>16 Q. (By Mr. Campbell-Harris) So,</p> <p>17 where are you physically located today?</p> <p>18 A. Wallace Jordan's law office.</p> <p>19 Q. Okay. And where is that</p> <p>20 located?</p> <p>21 A. Exactly or roughly? I don't</p> <p>22 understand.</p> <p>23 Q. What city and state is it</p> | <p style="text-align: right;">Page 17</p> <p>1 move?</p> <p>2 A. Florida.</p> <p>3 Q. Okay. And did you go to college</p> <p>4 in Florida as well?</p> <p>5 A. Yes.</p> <p>6 Q. And what is your highest level</p> <p>7 of education?</p> <p>8 A. Bachelor's degree.</p> <p>9 Q. Okay. Where did you go to</p> <p>10 school?</p> <p>11 A. Florida State University.</p> <p>12 Q. And did you receive a degree</p> <p>13 from Florida State?</p> <p>14 A. I did.</p> <p>15 Q. What was your degree in?</p> <p>16 A. Political science.</p> <p>17 Q. Okay. Did you have any minors?</p> <p>18 A. Yes.</p> <p>19 Q. What were your minors?</p> <p>20 A. Communications.</p> <p>21 Q. Okay. And what year did you</p> <p>22 graduate in?</p> <p>23 A. 1996.</p> |

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| <p style="text-align: right;">Page 18</p> <p>1 Q. Okay. Were you a member of any 2 clubs in college? 3 A. College Republicans. 4 Q. Okay. And did you join any 5 professional organizations after college? 6 A. No. 7 Q. Okay. Are you currently a 8 member of any political organizations? 9 A. Yes. 10 Q. What political organizations are 11 you a member of? 12 A. I'm a member of the Alabama 13 Republican Party and the chairman of the 14 Jefferson County Republican Party. 15 Q. Okay. How long have you been a 16 member of the Alabama Republican Party? 17 A. I can't recall specifically, but 18 more than ten years. 19 Q. Okay. And how long have you 20 been chairman of the Jefferson County 21 Republican Party? 22 A. February of 2023. 23 Q. Okay. Did you have any other</p> | <p style="text-align: right;">Page 20</p> <p>1 current company. 2 Q. What was your previous company? 3 A. Southern Insights. 4 Q. Okay. What did you do at 5 Southern Insights? 6 A. I gave general political 7 strategy for candidates. 8 Q. Okay. Were the candidates for 9 particular political parties? 10 A. Yes. 11 Q. Which political parties were the 12 candidates -- 13 A. Republican. 14 Q. Republican, you said? 15 A. Republican, yeah. 16 Q. Okay. Thank you. Do you 17 remember what the lobbying firm was that 18 you worked with in Florida? 19 A. Tidewater Consulting. 20 Q. Okay. 21 A. I should have said yes. 22 Q. And where do you currently live 23 today?</p> |
| <p style="text-align: right;">Page 19</p> <p>1 roles in the Jefferson County Republican 2 Party before becoming chairman? 3 A. Yes. 4 Q. What were those roles? 5 A. I served as chairman once 6 before, 2007-2008, and then I was a 7 treasurer of the county party from 2009 8 until 2022. 9 Q. Okay. Thank you. Can you tell 10 me each of the jobs that you've had since 11 graduating college through today? 12 A. Sure. I worked for the Florida 13 Republican Party right out of college, 14 and then I worked there -- then I left 15 and worked for a lobbying firm in 16 Tallahassee for about a year. And then I 17 went back to the Republican Party in 18 Florida. It's the Republican Party of 19 Florida is their official name. Then I 20 moved to Alabama and I worked at the 21 Alabama Republican Party. And then I 22 started political consulting in 2005. 23 But I had a previous company before my</p> | <p style="text-align: right;">Page 21</p> <p>1 A. Vestavia, Alabama. 2 Q. Okay. The company that you 3 worked at before -- the company you 4 founded before RedState, did it have any 5 offices? 6 A. Yes. 7 Q. Okay. And where were the 8 offices for Southern Strategies? 9 A. Vestavia, Alabama. 10 Q. Okay. Did it primarily serve 11 political actors in Alabama? 12 A. Primarily, yes. 13 Q. Okay. Did it serve political 14 actors outside of the state of Alabama? 15 A. Yes. 16 Q. Okay. In what states did it 17 offer services to political actors? 18 A. I can't recall specifically. I 19 know we did some work in Mississippi. 20 Q. Okay. And sorry. You said you 21 currently live in Alabama as well? 22 A. Yes. 23 Q. Okay. And what county in</p> |

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| <p style="text-align: right;">Page 22</p> <p>1 Alabama?</p> <p>2 A. Jefferson County.</p> <p>3 Q. Okay. And what do you do for a</p> <p>4 living today?</p> <p>5 A. I'm a political consultant.</p> <p>6 Q. Okay. How long have you been a</p> <p>7 political consultant?</p> <p>8 A. Eighteen -- roughly eighteen</p> <p>9 years.</p> <p>10 Q. Okay. And have you been a</p> <p>11 political consultant at the same company</p> <p>12 for 18 years?</p> <p>13 A. No.</p> <p>14 Q. Okay. How long have you been a</p> <p>15 political consultant at RedState</p> <p>16 Strategies?</p> <p>17 A. Over ten years. I'm trying to</p> <p>18 remember the exact date of formation. I</p> <p>19 don't remember that, but over ten years.</p> <p>20 Q. Okay. And can you tell me what</p> <p>21 RedState Strategies is?</p> <p>22 A. A full-service political</p> <p>23 consulting firm.</p> | <p style="text-align: right;">Page 24</p> <p>1 candidates that you offered services to</p> <p>2 at Southern Insights?</p> <p>3 A. Sure. Jim Carns, Clay Scofield,</p> <p>4 Scott Beason.</p> <p>5 Q. Okay. We'll come back to those</p> <p>6 individuals a little later. But were</p> <p>7 there any state legislators that you</p> <p>8 offered services to while you were</p> <p>9 working at Southern Insights?</p> <p>10 A. Yes.</p> <p>11 Q. Can you name some of those state</p> <p>12 legislators that you offered services to</p> <p>13 at Southern Insights?</p> <p>14 A. Jim Carns, Clay Scofield, Scott</p> <p>15 Beason.</p> <p>16 Q. Okay. Did you offer services to</p> <p>17 those same individuals at RedState?</p> <p>18 A. Some.</p> <p>19 Q. Okay. Who does RedState provide</p> <p>20 political consulting services to?</p> <p>21 A. A wide variety of candidates.</p> <p>22 Q. Okay. Can you provide some</p> <p>23 examples?</p> |
| <p style="text-align: right;">Page 23</p> <p>1 Q. Okay. And what does RedState</p> <p>2 Strategies do as a political full-service</p> <p>3 consulting firm?</p> <p>4 A. We offer a variety of services</p> <p>5 to political candidates.</p> <p>6 Q. Okay. Can you provide me some</p> <p>7 examples of the services you provide</p> <p>8 political candidates?</p> <p>9 A. General campaign strategy,</p> <p>10 legislative strategy, development of</p> <p>11 messages for campaigns.</p> <p>12 Q. And is that the same work that</p> <p>13 you did at Southern Strategies?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Do you remember any of</p> <p>16 the candidates that you offered services</p> <p>17 to at Southern Strategies?</p> <p>18 MR. JORDAN: Dayton, let me</p> <p>19 object. The name is Southern Insights.</p> <p>20 MR. CAMPBELL-HARRIS: Southern</p> <p>21 Insights. Thank you.</p> <p>22 MR. JORDAN: Yes, sir.</p> <p>23 Q. Okay. Can you name some of the</p> | <p style="text-align: right;">Page 25</p> <p>1 A. Can you restate that question?</p> <p>2 I mean, are you looking for --</p> <p>3 Q. Yeah. Does RedState Strategies</p> <p>4 only provide local consulting services to</p> <p>5 political candidates?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So RedState Strategies</p> <p>8 does not provide political consulting</p> <p>9 services to special interest groups?</p> <p>10 A. No.</p> <p>11 Q. Okay. And RedState Strategies</p> <p>12 does not offer political consulting</p> <p>13 services to national political parties?</p> <p>14 A. No.</p> <p>15 Q. Okay. When was RedState</p> <p>16 Strategies founded?</p> <p>17 A. I want to say 2012.</p> <p>18 Q. Okay. And who founded it?</p> <p>19 A. I did.</p> <p>20 Q. Okay. And why did you found</p> <p>21 RedState?</p> <p>22 A. I mean, I had a partner in the</p> <p>23 previous consulting firm, and we went our</p> |

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| <p style="text-align: right;">Page 26</p> <p>1 separate ways.</p> <p>2 Q. Okay. Does RedState have any</p> <p>3 staff members besides yourself?</p> <p>4 A. No.</p> <p>5 Q. Okay. Has RedState ever had any</p> <p>6 additional staff besides yourself?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Who was that person or</p> <p>9 people?</p> <p>10 A. Well, it's been some time since</p> <p>11 I had a staffer, but it would have</p> <p>12 been -- her name was Erin Eckert.</p> <p>13 Q. Okay. And what was Erin's role?</p> <p>14 A. She was my assistant.</p> <p>15 Q. Besides Erin, there was no other</p> <p>16 staff at RedState?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. So you mentioned that</p> <p>19 RedState provides political consulting</p> <p>20 services to political candidates. Does</p> <p>21 that include state executives?</p> <p>22 A. At times, yes.</p> <p>23 Q. Okay. What were those instances</p> | <p style="text-align: right;">Page 28</p> <p>1 provides political candidates, are those</p> <p>2 limited to consulting on political</p> <p>3 campaign strategy?</p> <p>4 A. No.</p> <p>5 Q. Okay. What other -- how else</p> <p>6 does RedState provide services to</p> <p>7 political candidates?</p> <p>8 A. I mean, that's broad. But, I</p> <p>9 mean, one of the things I do is during</p> <p>10 the legislative session, my clients ask</p> <p>11 me to look at the bills they're --</p> <p>12 they're entertaining and give an opinion</p> <p>13 on the legislation.</p> <p>14 Q. Okay. Is the nature of the</p> <p>15 consulting you provide political</p> <p>16 candidates limited to review of</p> <p>17 legislation and political campaign</p> <p>18 strategy?</p> <p>19 A. No.</p> <p>20 Q. What other -- how else do you</p> <p>21 provide services to political candidates?</p> <p>22 A. I mean, I've offered general</p> <p>23 redistricting information to them.</p> |
| <p style="text-align: right;">Page 27</p> <p>1 that RedState provided political</p> <p>2 consulting services to state executives?</p> <p>3 A. I represent the state auditor.</p> <p>4 Q. Okay. Anyone else?</p> <p>5 A. Not currently, no.</p> <p>6 Q. Okay. What about previously or</p> <p>7 historically?</p> <p>8 A. RedState Strategies has never</p> <p>9 represented any other statewide executive</p> <p>10 officers besides the state auditor.</p> <p>11 Q. Okay. Thank you.</p> <p>12 Can you walk me through what</p> <p>13 some of your duties are as -- well,</p> <p>14 scratch that.</p> <p>15 What's your role at RedState</p> <p>16 currently?</p> <p>17 A. President.</p> <p>18 Q. Okay. Can you walk me through</p> <p>19 what your duties are as president of</p> <p>20 RedState?</p> <p>21 A. I mostly provide consulting for</p> <p>22 my existing clients as they need me.</p> <p>23 Q. Are the services that RedState</p> | <p style="text-align: right;">Page 29</p> <p>1 Q. Okay.</p> <p>2 A. I mean --</p> <p>3 Q. Anything else?</p> <p>4 A. I guess the question is -- I</p> <p>5 don't -- I cannot recall much more. I</p> <p>6 mean, I guess I need a more specific</p> <p>7 question.</p> <p>8 Q. Okay. And when you're referring</p> <p>9 to clients that RedState Strategies has,</p> <p>10 what type of actors are you referring to?</p> <p>11 A. Anyone that has ever contracted</p> <p>12 me to help them in any form or fashion.</p> <p>13 Q. Okay. And how does someone</p> <p>14 become a client of RedState Strategies?</p> <p>15 A. They engage me, and then they</p> <p>16 end up paying me consulting fees and</p> <p>17 other fees as needed.</p> <p>18 Q. What do you mean by they engage</p> <p>19 you?</p> <p>20 A. You know, I meet with a</p> <p>21 potential client. We talk about their</p> <p>22 candidacy or whatever they need them for.</p> <p>23 And then I agree to work for them, and</p> |

8 (Pages 26 - 29)

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| <p style="text-align: right;">Page 30</p> <p>1 then I agree to be an actor for them.</p> <p>2 Q. Do you always receive</p> <p>3 compensation from the clients you serve?</p> <p>4 A. I only give consulting for</p> <p>5 people that pay me to consult.</p> <p>6 Q. Okay. Who initiates these</p> <p>7 engagements between RedState and the</p> <p>8 clients that you serve?</p> <p>9 A. The candidate, elected official,</p> <p>10 what have you.</p> <p>11 Q. Is that always the case?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Are these engagements</p> <p>14 with political actors, are they</p> <p>15 temporally limited at all?</p> <p>16 A. No.</p> <p>17 Q. Okay. The issues that you</p> <p>18 provide consulting on, are those limited</p> <p>19 in scope?</p> <p>20 A. No.</p> <p>21 Q. Okay. How do the political</p> <p>22 actors that RedState services, provides</p> <p>23 services to, learn about you?</p> | <p style="text-align: right;">Page 32</p> <p>1 Q. And are you a registered</p> <p>2 lobbyist in Alabama?</p> <p>3 A. No.</p> <p>4 Q. Is RedState a registered</p> <p>5 lobbyist?</p> <p>6 A. No.</p> <p>7 Q. Have you ever been a registered</p> <p>8 lobbyist in Alabama?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And RedState has never</p> <p>11 been hired by any governmental entities;</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. Has RedState ever</p> <p>15 received any compensation from national</p> <p>16 political groups?</p> <p>17 A. No.</p> <p>18 Q. Okay. And RedState has been</p> <p>19 hired by individuals who hold elected</p> <p>20 office; correct?</p> <p>21 A. Or tried to hold elected office,</p> <p>22 yes.</p> <p>23 Q. Okay. Does RedState currently</p> |
| <p style="text-align: right;">Page 31</p> <p>1 A. I can't answer. I don't know.</p> <p>2 Q. Okay. How do you build your</p> <p>3 business with political actors at</p> <p>4 RedState?</p> <p>5 A. Now, my perception is I get my</p> <p>6 business through word of mouth, but I</p> <p>7 really have no definitive answer on that.</p> <p>8 Q. Okay. So from referrals from</p> <p>9 past clients?</p> <p>10 A. That's my observation, but I</p> <p>11 don't know that for a fact.</p> <p>12 Q. Okay. Is RedState only</p> <p>13 compensated monetarily, or are there</p> <p>14 other forms of compensation that you</p> <p>15 receive from clients?</p> <p>16 A. I don't understand what "other</p> <p>17 forms of compensation" would be.</p> <p>18 Q. For example, tickets to a gala</p> <p>19 or anything else of value besides money.</p> <p>20 A. No.</p> <p>21 Q. Okay. Does RedState have a</p> <p>22 budget?</p> <p>23 A. No.</p> | <p style="text-align: right;">Page 33</p> <p>1 have any clients?</p> <p>2 A. Yes.</p> <p>3 Q. Can you name who those clients</p> <p>4 are?</p> <p>5 A. Well, there are a lot. I can</p> <p>6 name some. Do you want me to name every</p> <p>7 one to the best of my memory?</p> <p>8 Q. To the best of your memory, yes.</p> <p>9 A. Senator Sam Givhan, Senator Tom</p> <p>10 Butler, Senator Jabo Waggoner, Senator</p> <p>11 Dan Roberts, Senator Shay Shelnut, </p> <p>12 Senator Will Barfoot, Senator Steve</p> <p>13 Livingston, Representative Jim Carns,</p> <p>14 Representative David Faulkner,</p> <p>15 Representative Van Smith, Representative</p> <p>16 Arnold Mooney, Representative Rick Rehm,</p> <p>17 Representative Jamie Kiel, Representative</p> <p>18 Danny Crawford, Representative Brock</p> <p>19 Colvin. I know I'm missing some.</p> <p>20 Q. I trust you. Thank you.</p> <p>21 Let's talk about some of the</p> <p>22 work that you did for these individuals.</p> <p>23 So you said you worked with Sam Givhan.</p> |

9 (Pages 30 - 33)

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| <p style="text-align: right;">Page 34</p> <p>1 Is that correct?</p> <p>2 A. Givhan, G-I-V-H-A-N.</p> <p>3 Q. Okay. When did you perform</p> <p>4 political consulting services for Sam</p> <p>5 Divhan?</p> <p>6 A. It's Givhan with a G.</p> <p>7 Q. Givhan. Sorry.</p> <p>8 A. Right. I've run his campaigns.</p> <p>9 Q. Okay. When did you run Givhan's</p> <p>10 campaigns?</p> <p>11 A. I ran -- I first -- well, I</p> <p>12 worked with him under Southern Insights</p> <p>13 when he did not win, and then he was</p> <p>14 elected in the 2018 election cycle. I</p> <p>15 helped him on that one. And then I</p> <p>16 helped him in reelection in 2022.</p> <p>17 Q. Okay. So political campaign</p> <p>18 consulting for Givhan?</p> <p>19 A. Among other things, yes.</p> <p>20 Q. Well, what other things did you</p> <p>21 provide political consulting services</p> <p>22 for?</p> <p>23 A. I provide whatever advice they</p> | <p style="text-align: right;">Page 36</p> <p>1 me to talk about, I answer his questions.</p> <p>2 Q. Okay. Was redistricting among</p> <p>3 the topics you provided advice to Sam</p> <p>4 Givhan on?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And when did you provide</p> <p>7 redistricting advice to Sam Givhan?</p> <p>8 A. Prior to the redistricting of</p> <p>9 the legislative maps.</p> <p>10 Q. What year?</p> <p>11 A. I don't recall specifically, but</p> <p>12 I think it was 2021 possibly. I don't</p> <p>13 remember specifically.</p> <p>14 Q. Okay. So you offered</p> <p>15 redistricting advice to Sam Givhan</p> <p>16 following the 2020 census?</p> <p>17 A. That would be correct, yes.</p> <p>18 Q. Okay. Did you provide</p> <p>19 redistricting advice to Sam Givhan in</p> <p>20 2023?</p> <p>21 A. No.</p> <p>22 Q. Okay. And do you recall what</p> <p>23 maps you provided redistricting advice to</p> |
| <p style="text-align: right;">Page 35</p> <p>1 need at the time they need it.</p> <p>2 Q. Okay. And what advice did you</p> <p>3 provide Sam Givhan?</p> <p>4 A. As a --</p> <p>5 MR. JORDAN: Well, let me object</p> <p>6 to the form of that. And the reason, I</p> <p>7 think the question might be too broad and</p> <p>8 be asking for the substance of</p> <p>9 communications that are protected by the</p> <p>10 legislative privilege and his</p> <p>11 relationship. And I don't think you</p> <p>12 meant to do that, but I'm concerned that</p> <p>13 he might veer off into that just because</p> <p>14 he's being so attentive to your question.</p> <p>15 MR. CAMPBELL-HARRIS: I can</p> <p>16 rephrase the question.</p> <p>17 Q. Without divulging into the</p> <p>18 substance of conversations with Sam</p> <p>19 Givhan, what did you offer advice to him</p> <p>20 on?</p> <p>21 A. A broad variety of topics:</p> <p>22 campaign consulting, legislative</p> <p>23 consulting, you know. Whatever he needed</p> | <p style="text-align: right;">Page 37</p> <p>1 Sam Givhan in 2021 about?</p> <p>2 A. I do not.</p> <p>3 Q. Okay. Do you remember whether</p> <p>4 the maps you offered redistricting advice</p> <p>5 on were congressional or state</p> <p>6 legislative maps?</p> <p>7 A. It would have been legislative.</p> <p>8 Q. State legislative maps?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. The state senate maps and</p> <p>11 state house maps or one or the other?</p> <p>12 A. State senate.</p> <p>13 Q. Okay. Did you offer</p> <p>14 redistricting advice to Tom Butler as</p> <p>15 well?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Okay. Did you offer</p> <p>18 redistricting advice to Dan Roberts?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. When did you provide</p> <p>21 redistricting advice to Dan Roberts?</p> <p>22 A. I mean, that's a very broad</p> <p>23 question, so can you rephrase?</p> |

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| <p style="text-align: right;">Page 38</p> <p>1 Q. I can. Did you offer</p> <p>2 redistricting advice to Dan Roberts after</p> <p>3 the 2010 census?</p> <p>4 A. No. You mean 2020?</p> <p>5 Q. My next question. Did you offer</p> <p>6 redistricting advice to Dan Roberts</p> <p>7 following the 2020 census?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And did you offer advice</p> <p>10 to Dan Roberts about -- what maps?</p> <p>11 A. In regard to that last question?</p> <p>12 Q. After the 2020 census, what maps</p> <p>13 did you offer political consulting advice</p> <p>14 to Dan Roberts about?</p> <p>15 MR. JORDAN: Let me object to</p> <p>16 the form of that. You mean like whether</p> <p>17 it's the -- office-related or a</p> <p>18 particular -- you mean the office that</p> <p>19 they relate to rather than a particular</p> <p>20 map, particular communication?</p> <p>21 MR. CAMPBELL-HARRIS: Let me</p> <p>22 rephrase the question.</p> <p>23 Q. Did you offer redistricting</p> | <p style="text-align: right;">Page 40</p> <p>1 Alabama?</p> <p>2 A. Do you have a specific time</p> <p>3 frame? I mean --</p> <p>4 Q. No.</p> <p>5 A. I mean, I -- I offered him</p> <p>6 advice after the 2020 census on his</p> <p>7 district.</p> <p>8 Q. Okay. So you offered -- scratch</p> <p>9 that.</p> <p>10 Did you offer Shay Shelnett</p> <p>11 redistricting advice in 2021?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And did you offer Shay</p> <p>14 Shelnett redistricting advice in 2022?</p> <p>15 A. No.</p> <p>16 Q. Did you offer Shay Shelnett</p> <p>17 redistricting advice in 2023?</p> <p>18 A. No.</p> <p>19 Q. Okay. And did you offer</p> <p>20 redistricting advice to Will Barfoot in</p> <p>21 2021?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And did that concern the</p> |
| <p style="text-align: right;">Page 39</p> <p>1 advice to Dan Roberts about the</p> <p>2 congressional map Alabama passed in 2021?</p> <p>3 A. No.</p> <p>4 Q. Okay. Did you offer</p> <p>5 redistricting advice to Dan Roberts about</p> <p>6 the congressional map passed in 2023?</p> <p>7 A. Well, I guess the question is</p> <p>8 that I don't understand the -- I mean,</p> <p>9 because the map that passed was not a map</p> <p>10 that I offered advice in.</p> <p>11 Q. I'm not asking about the map.</p> <p>12 I'm just asking, did you offer Dan</p> <p>13 Roberts advice about redistricting in</p> <p>14 Alabama in 2023?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And did you offer --</p> <p>17 scratch that.</p> <p>18 You also offered political</p> <p>19 consulting services to Shay Shelnett?</p> <p>20 Did I pronounce that correctly?</p> <p>21 A. Correct, yes.</p> <p>22 Q. And was any of that political</p> <p>23 consulting advice about redistricting in</p> | <p style="text-align: right;">Page 41</p> <p>1 state senate map?</p> <p>2 A. His district, yes.</p> <p>3 Q. Okay. And did the advice you</p> <p>4 offered to Shay Shelnett also concern the</p> <p>5 state senate map?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And you also offered</p> <p>8 advice to Steve Livingston; correct?</p> <p>9 A. In what regard?</p> <p>10 Q. You offered advice about</p> <p>11 redistricting to Steve Livingston in</p> <p>12 2023; correct?</p> <p>13 A. Yes, but very little.</p> <p>14 Q. Okay. Did you offer advice on</p> <p>15 redistricting in Alabama to Steve</p> <p>16 Livingston in 2021?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. What -- scratch that.</p> <p>19 Did you offer advice about</p> <p>20 redistricting in Alabama to Jim Carns</p> <p>21 following the 2020 census?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And did that concern his</p> |

11 (Pages 38 - 41)

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| <p style="text-align: right;">Page 42</p> <p>1 district and the state house map?</p> <p>2 A. Yes.</p> <p>3 Q. And did you offer advice to Mr.</p> <p>4 Faulkner about redistricting in Alabama</p> <p>5 following the 2020 census?</p> <p>6 A. Yes.</p> <p>7 Q. And did that concern Mr.</p> <p>8 Faulkner's district as well?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And you offered advice to</p> <p>11 Arnold Mooney about redistricting in</p> <p>12 Alabama following the 2020 census?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And did that advice</p> <p>15 concern his district?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And you offered advice to</p> <p>18 Jamie Kiel about redistricting in Alabama</p> <p>19 as well?</p> <p>20 A. Yes.</p> <p>21 Q. And what was the scope of that</p> <p>22 advice?</p> <p>23 A. It would have been in regard to</p> | <p style="text-align: right;">Page 44</p> <p>1 advice about these legislative members'</p> <p>2 districts, what were you paid to do?</p> <p>3 A. I wasn't specifically paid to do</p> <p>4 anything.</p> <p>5 Q. Okay. Did you enter into</p> <p>6 contracts with these legislators when you</p> <p>7 offered political consulting services?</p> <p>8 A. Not -- not specifically, no.</p> <p>9 Q. Did you enter into any contracts</p> <p>10 with these legislators in regards to the</p> <p>11 redistricting advice you offered them?</p> <p>12 A. No.</p> <p>13 Q. Okay. Did these legislators pay</p> <p>14 you for the redistricting advice you</p> <p>15 offered them?</p> <p>16 A. My clients pay me for a variety</p> <p>17 of consulting. I don't itemize what</p> <p>18 they're paying me for.</p> <p>19 Q. Okay. Do you bill these clients</p> <p>20 for the services you provide them?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And you keep copies of</p> <p>23 those bills that you send to the clients?</p> |
| <p style="text-align: right;">Page 43</p> <p>1 his legislative house district in 2021.</p> <p>2 Q. Okay. And you offered advice to</p> <p>3 Danny Crawford about redistricting in</p> <p>4 Alabama after the 2020 census?</p> <p>5 A. Yes.</p> <p>6 Q. And what was the scope of that</p> <p>7 advice?</p> <p>8 A. It would be in regard to his</p> <p>9 house district.</p> <p>10 Q. Okay.</p> <p>11 MR. JORDAN: Just one second.</p> <p>12 (Discussion held off the record.)</p> <p>13 MR. JORDAN: Sorry, Dayton.</p> <p>14 Thank you. Thanks for letting me pause</p> <p>15 you.</p> <p>16 MR. CAMPBELL-HARRIS: No</p> <p>17 problem.</p> <p>18 Q. (By Mr. Campbell-Harris) You</p> <p>19 also offered advice to Mr. Colvin about</p> <p>20 redistricting in Alabama. Is that</p> <p>21 correct?</p> <p>22 A. I did not.</p> <p>23 Q. Okay. When you say you offered</p> | <p style="text-align: right;">Page 45</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Let's go back to the</p> <p>3 advice you offered Tom Butler. Can you</p> <p>4 tell me a little bit more about the kinds</p> <p>5 of input you offered him about his</p> <p>6 district?</p> <p>7 A. I didn't say I offered Tom</p> <p>8 Butler any advice on his district.</p> <p>9 Q. My apologies. Let's go to Dan</p> <p>10 Roberts. You offered advice to Dan</p> <p>11 Roberts about his district following the</p> <p>12 2020 census; right?</p> <p>13 A. Yes.</p> <p>14 Q. What kind of input did you offer</p> <p>15 him?</p> <p>16 MR. JORDAN: Are you asking for</p> <p>17 the substance of the communication?</p> <p>18 MR. CAMPBELL-HARRIS: I'm asking</p> <p>19 about the general topics without</p> <p>20 divulging into a topic, like the</p> <p>21 specifics.</p> <p>22 THE WITNESS: I'm not so sure I</p> <p>23 can do that.</p> |

12 (Pages 42 - 45)

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| <p style="text-align: right;">Page 46</p> <p>1 MR. JORDAN: I'm just trying to 2 make sure that we're all faithful to the 3 presence of the objection and our ability 4 to fairly present issues on Thursday for 5 the Court in the hearing, so. 6 MR. WELLER: I think he's given 7 you -- Dayton, I think he's given you the 8 broad topic, and that is he gave advice 9 on redistricting. I'm very reluctant to 10 allow you to ask him questions beyond 11 that because then you get into the 12 content of the specific communications, 13 you know, with the nonparty legislators. 14 MR. CAMPBELL-HARRIS: Okay. Are 15 you instructing Mr. Brown not to answer 16 the question? 17 MR. WELLER: I don't have the 18 authority to instruct him one way or the 19 other. He's not my client. 20 MR. CAMPBELL-HARRIS: Okay. Mr. 21 Jordan, are you instructing Mr. Brown not 22 to answer? 23 MR. JORDAN: Well, we -- let's</p> | <p style="text-align: right;">Page 48</p> <p>1 Q. Okay. Have you offered 2 redistricting advice to any mapmakers in 3 the state of Alabama? 4 A. No. 5 Q. Okay. And since the 2020 6 census, has RedState been hired by anyone 7 else employed by the State of Alabama? 8 A. Can you be more specific? 9 Q. Well, since the 2020 census, has 10 RedState been hired by any state -- any 11 other state legislators in the state of 12 Alabama besides the ones we mentioned 13 already? 14 MR. JORDAN: Dayton, with all 15 due respect, again, I think he gave you a 16 pretty good list, and he said he wasn't 17 sure that he'd named them all. And, you 18 know, he may not remember them right now, 19 but there's quite a number, as you can 20 tell, so there may have been one that he 21 didn't mention, but that doesn't mean he 22 didn't work for them or that he 23 remembered it and just didn't tell you.</p> |
| <p style="text-align: right;">Page 47</p> <p>1 just go question by question. But at the 2 risk of avoiding -- or at the risk of 3 seeming to interrupt you, I wanted to let 4 you know that I had a concern about where 5 you seem to be going with this, and I 6 will instruct him to be faithful to the 7 legislative privilege with respect to the 8 particulars of advice that's offered. 9 And I think that he's done a pretty good 10 job of giving you general statements that 11 he offered advice on certain kinds of 12 districts, and I'm not sure that -- I'm 13 pretty sure it's not proper to go into 14 any more detail, with all due respect, 15 Counselor. 16 MR. CAMPBELL-HARRIS: Okay. 17 Q. Mr. Brown are you going to 18 follow your attorney's advice and not 19 answer my question about the kind of 20 input you offered -- 21 A. Yes. 22 Q. -- Mr. Roberts? 23 A. Yes.</p> | <p style="text-align: right;">Page 49</p> <p>1 Q. Mr. Brown, can you recall 2 whether there are any other state 3 legislators that RedState has worked with 4 as clients in the state of Alabama 5 following the 2020 census? 6 A. In addition to the ones I 7 already named? 8 Q. Correct. 9 A. Well, I can't remember who I 10 named now, so I -- it's possible I forgot 11 somebody, but I don't remember who I 12 stated, all of them right now. Sorry. 13 Q. Okay. No problem. 14 Does RedState have -- well, 15 scratch that. Does RedState have a 16 recordkeeping or document retention 17 policy? 18 A. No. 19 Q. Okay. Does RedState preserve 20 business documents? 21 A. As best I can, yes. 22 Q. Okay. How do you go about 23 preserving business documents?</p> |

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| <p style="text-align: right;">Page 50</p> <p>1 A. You know, I either have it on my 2 computer or on, you know, a Dropbox, but 3 not everything is preserved adequately, 4 probably. 5 Q. Do you have separate computers 6 for RedState business and personal 7 business? 8 A. No. 9 Q. Okay. Do you have separate 10 account -- e-mail accounts for business 11 and personal use? 12 A. I have more than one e-mail 13 account. 14 Q. Okay. Do you use the same 15 e-mail account for RedState business as 16 you do for I guess personal business? 17 Well, scratch that. 18 What e-mail accounts -- how many 19 e-mail accounts do you have? 20 A. Two. 21 Q. Two? 22 A. Yes. 23 Q. Okay. And do you use one e-mail</p> | <p style="text-align: right;">Page 52</p> <p>1 A. I can't recall ever deleting a 2 document. 3 Q. Okay. Okay. That's all the 4 questions I have about RedState. Thank 5 you Mr. Brown. 6 I know we've been going for 7 almost an hour. Would you want to take a 8 break at this point, or do you want to 9 keep going? 10 A. I'd keep going. 11 Q. All right. Let's talk about a 12 little bit more your involvement in 13 redistricting. How did you first get 14 involved in redistricting work? 15 A. You know, as a consultant, I 16 decided to offer a variety of resources 17 to my clients to best serve them, and I 18 decided that this was a service that I 19 could provide. 20 Q. Okay. Do you recall roughly 21 what year you started working in 22 redistricting? 23 A. Maybe 2020, maybe.</p> |
| <p style="text-align: right;">Page 51</p> <p>1 account for personal use and another for 2 business? 3 A. No. 4 Q. How do you use your e-mail 5 accounts? 6 A. I generally use the RedState 7 Strategies e-mail account for virtually 8 everything. 9 Q. Okay. So you have one computer 10 that you use for personal and business, 11 and you primarily use the RedState e-mail 12 for personal use and business use? 13 A. Yes. 14 Q. Okay. Does RedState upload or 15 download documents to any hard drive or 16 to a cloud-based drive? 17 A. Sometimes I upload documents to 18 Dropbox. 19 Q. Okay. And does RedState delete 20 documents after a certain time period? 21 A. Not normally, no. 22 Q. Okay. And you're responsible 23 for deleting documents at RedState?</p> | <p style="text-align: right;">Page 53</p> <p>1 Q. Okay. Prior to the 2020 census, 2 you did not offer clients political 3 advice about redistricting? 4 A. I can't definitively say yes or 5 no. It's possible. I just don't recall. 6 Q. Okay. Has all your 7 redistricting work been in the state of 8 Alabama, or have you done redistricting 9 work in other states? 10 A. Only Alabama. 11 Q. Okay. Have you received any 12 training on mapmaking? 13 A. Yes. 14 Q. Okay. What training did you 15 receive? 16 A. I watched the tutorial on how to 17 use the software. 18 Q. What software are you referring 19 to? 20 A. Maptitude. 21 Q. Okay. When did you watch that 22 tutorial? 23 A. Around the time the census was</p> |

14 (Pages 50 - 53)

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| <p style="text-align: right;">Page 54</p> <p>1 completed.</p> <p>2 Q. Okay. So around 2020?</p> <p>3 A. Yeah.</p> <p>4 Q. Okay. And have you received any</p> <p>5 other training?</p> <p>6 A. No.</p> <p>7 Q. Okay. And have you received</p> <p>8 training on reading the census?</p> <p>9 A. No.</p> <p>10 Q. Okay. Have you received any</p> <p>11 training on interpreting demographic</p> <p>12 data?</p> <p>13 A. No.</p> <p>14 Q. Okay. Can you tell me what</p> <p>15 racially polarized voting leads to?</p> <p>16 A. Excuse me? Repeat.</p> <p>17 Q. Are you familiar with the term</p> <p>18 "racially polarized voting"?</p> <p>19 A. Not really, no.</p> <p>20 Q. Okay. Are you able to conduct a</p> <p>21 racially polarized voting analysis?</p> <p>22 A. No.</p> <p>23 Q. Okay. And you haven't received</p> | <p style="text-align: right;">Page 56</p> <p>1 congresspeople.</p> <p>2 A. Yes.</p> <p>3 Q. Okay. How many plans have you</p> <p>4 drawn on behalf of elected officials in</p> <p>5 the state of Alabama?</p> <p>6 A. I can't recall a specific</p> <p>7 number. There were lots of plans that I</p> <p>8 have drawn.</p> <p>9 Q. Okay. More than ten?</p> <p>10 A. Yes.</p> <p>11 Q. More than twenty?</p> <p>12 A. Yes.</p> <p>13 Q. More than fifty?</p> <p>14 A. I can't answer that. I'm not</p> <p>15 sure of that.</p> <p>16 Q. Okay. And were these plans</p> <p>17 state legislative plans or congressional</p> <p>18 plans?</p> <p>19 A. A combination of both.</p> <p>20 Q. Okay. Have you drawn plans for</p> <p>21 specific counties?</p> <p>22 A. No.</p> <p>23 Q. Okay. Have you drawn plans for</p> |
| <p style="text-align: right;">Page 55</p> <p>1 any training on conducting a racially</p> <p>2 polarized voting analysis?</p> <p>3 A. No.</p> <p>4 Q. Okay. Have you drawn any</p> <p>5 redistricting plans for the state of</p> <p>6 Alabama?</p> <p>7 MR. JORDAN: Object to the form.</p> <p>8 You mean in connection with legislation</p> <p>9 that may be considering the shape of</p> <p>10 districts? You don't mean hired by</p> <p>11 Alabama, as an agent for Alabama? You</p> <p>12 don't mean as an agent for Alabama?</p> <p>13 MR. CAMPBELL-HARRIS: No.</p> <p>14 MR. JORDAN: The question was</p> <p>15 possibly broad, too broad. That was all.</p> <p>16 Q. Mr. Brown, do you need me to</p> <p>17 repeat the question?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Have you drawn any</p> <p>20 redistricting plans on behalf of state</p> <p>21 actors in the state of Alabama?</p> <p>22 A. Can you define state actor?</p> <p>23 Q. Elected state legislators or</p> | <p style="text-align: right;">Page 57</p> <p>1 parishes?</p> <p>2 A. What's a parish?</p> <p>3 Q. Like a county in Louisiana.</p> <p>4 A. No.</p> <p>5 Q. Okay. Have you drawn any school</p> <p>6 board district plans?</p> <p>7 A. No.</p> <p>8 Q. Okay. Have you drawn any city</p> <p>9 council district plans?</p> <p>10 A. No.</p> <p>11 Q. Okay. Thank you.</p> <p>12 You weren't involved in</p> <p>13 redistricting in Alabama following the</p> <p>14 2010 census; correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Let's talk about the 2021</p> <p>17 redistricting cycle in Alabama. How did</p> <p>18 RedState first become involved in the</p> <p>19 2021 redistricting process in Alabama?</p> <p>20 A. As I said, I offer -- I was</p> <p>21 offering a variety of services to my</p> <p>22 clients to best prepare them for anything</p> <p>23 that they were doing, so I decided to be</p> |

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| <p style="text-align: right;">Page 58</p> <p>1 able to offer that service to them in 2 that cycle. 3 Q. Did all your clients approach 4 you seeking services on redistricting in 5 Alabama following the 2021 cycle? 6 A. I'm not so sure of that. Can 7 you rephrase that question because I'm 8 not sure about that. It's -- go ahead. 9 Q. I can. Did the clients that you 10 offered redistricting advice to following 11 the 2020 census, did they initiate 12 conversations with you to seek that 13 advice? 14 A. Some. 15 Q. Okay. Which clients initiated 16 those conversations with you? 17 A. I cannot recall specifically. 18 Q. Okay. But -- sorry. 19 A. No. I was going to say it is -- 20 in the legislative process, I offer them 21 all advice to their districts that were 22 legislators, but I can't recall who 23 initiated which.</p> | <p style="text-align: right;">Page 60</p> <p>1 house maps during the 2021 redistricting 2 cycle in Alabama? 3 A. Again, I guess the question is 4 -- the context is a little broad. I 5 mean, can you -- 6 Q. Let me rephrase. I think you 7 kind of answered this question already. 8 When did you provide the 9 redistricting advice services to your 10 clients in 2021? 11 A. I believe I provided all prior 12 to the final -- I mean, before the maps 13 were determined. I gave them all advice 14 before the maps were determined. 15 Q. Okay. So safe to say between 16 the time the census data was released and 17 before the maps were enacted into law? 18 A. Yes. 19 Q. Okay. But you can't recall 20 specific instances of when you worked on 21 specific plans or maps for specific 22 clients at this time? 23 A. During 2021?</p> |
| <p style="text-align: right;">Page 59</p> <p>1 Q. Safe to say, Mr. Brown, some 2 clients initiated the conversations with 3 you and you initiated the conversations 4 with other clients? 5 A. Yes. 6 Q. Okay. Do you recall what maps 7 you worked on for your clients during the 8 2021 redistricting cycle in Alabama? 9 A. You mean specific maps? 10 Q. Correct. 11 A. No. 12 Q. Okay. Are you familiar with 13 House Bill 1 during the 2021 14 redistricting cycle? 15 A. I know that was a redistricting 16 map, but I can't tell you what map it 17 was. 18 Q. Okay. Did you work on any 19 congressional maps for your clients 20 during the 2021 redistricting cycle in 21 Alabama? 22 A. No. 23 Q. Okay. Did you work on any state</p> | <p style="text-align: right;">Page 61</p> <p>1 Q. Correct. 2 A. No. 3 Q. You can recall or you cannot 4 recall? 5 A. No, I cannot recall. 6 Q. Okay. Thank you. 7 Were you asked to provide any 8 input on any congressional redistricting 9 bills in 2021? 10 A. No. 11 Q. Okay. Were you asked to provide 12 input on any state house bills in 2021? 13 A. Not specifically, no. 14 Q. Okay. And were you asked to 15 provide any input on any state senate 16 redistricting bills in 2021? 17 A. Not specifically, no. 18 Q. Okay. Did anyone send you any 19 bills or maps for your review during the 20 2021 redistricting cycle in Alabama? 21 A. No. I mean, I think I acquired 22 them myself when the bills were dropped. 23 Q. Okay. Do you recall which bills</p> |

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| <p style="text-align: right;">Page 62</p> <p>1 that you acquired?</p> <p>2 A. I do not remember, no.</p> <p>3 Q. Okay. Did you contact anyone in</p> <p>4 the state legislature about any</p> <p>5 redistricting plan or bills during the</p> <p>6 2021 Alabama redistricting cycle?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Okay. Were you asked to provide</p> <p>9 any testimony during the Alabama 2021</p> <p>10 redistricting cycle --</p> <p>11 A. No.</p> <p>12 Q. -- about any maps or plans?</p> <p>13 A. No.</p> <p>14 Q. And did you provide any</p> <p>15 technical assistance to the</p> <p>16 reapportionment committee during the 2021</p> <p>17 redistricting cycle in Alabama?</p> <p>18 A. Not that I recall.</p> <p>19 Q. Okay. You were involved in the</p> <p>20 2023 special session concerning Alabama's</p> <p>21 congressional redistricting?</p> <p>22 A. I mean, I think that question is</p> <p>23 very broad, so, I mean, can you be more</p> | <p style="text-align: right;">Page 64</p> <p>1 A. Sure.</p> <p>2 Q. What work did you perform on --</p> <p>3 well, scratch that. Let's break this</p> <p>4 down a little bit.</p> <p>5 Are you familiar with the</p> <p>6 Opportunity plan?</p> <p>7 A. Vaguely, yes.</p> <p>8 Q. Okay. Do you recall when you</p> <p>9 first saw the Opportunity plan in 2023?</p> <p>10 A. I do not.</p> <p>11 Q. Did you author the Opportunity</p> <p>12 plan?</p> <p>13 A. I don't believe so, no. The</p> <p>14 names -- the names of those plans, I</p> <p>15 don't -- I don't recall the exact plan</p> <p>16 unless it was in front of me.</p> <p>17 Q. Okay. If you saw the plan,</p> <p>18 you'd be able to say if you authored the</p> <p>19 plan or not, though?</p> <p>20 A. Possibly.</p> <p>21 Q. Did you author any plans during</p> <p>22 the 2023 special session redistricting</p> <p>23 cycle?</p> |
| <p style="text-align: right;">Page 63</p> <p>1 specific?</p> <p>2 Q. Sure. Did you work on any plans</p> <p>3 or maps from June 9th to July 21st, 2023,</p> <p>4 concerning Alabama's congressional</p> <p>5 redistricting plans?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. What maps?</p> <p>8 A. There were a number of maps. I</p> <p>9 cannot remember specifically what maps</p> <p>10 they are.</p> <p>11 Q. That's okay. Do you recall what</p> <p>12 the work you did was for any maps --</p> <p>13 A. Yes.</p> <p>14 Q. -- in 2023? Okay. What work</p> <p>15 did you do for any plans?</p> <p>16 MR. JORDAN: Object to that to</p> <p>17 the extent asked -- object to that to the</p> <p>18 extent it requests him to provide the</p> <p>19 content of communications to a legislator</p> <p>20 other than Mr. Livingston.</p> <p>21 MR. CAMPBELL-HARRIS: Okay.</p> <p>22 Q. Do you want me to repeat the</p> <p>23 question, Mr. Brown?</p> | <p style="text-align: right;">Page 65</p> <p>1 A. I mean, I think "author" is a</p> <p>2 broad variety of questions because I</p> <p>3 don't -- I didn't author anything.</p> <p>4 Q. Did you create any redistricting</p> <p>5 plans on Maptitude during the 2023</p> <p>6 special session in Alabama?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Did you provide those</p> <p>9 plans to any state legislators?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Which state legislators</p> <p>12 did you provide the plans you authored</p> <p>13 to?</p> <p>14 A. Senator Dan Roberts.</p> <p>15 Q. Okay. Do you recall when you</p> <p>16 provided Senator Dan Roberts with the</p> <p>17 plan you created?</p> <p>18 A. Well, again, I didn't create the</p> <p>19 plan --</p> <p>20 Q. Okay.</p> <p>21 A. -- necessarily. "Create" is a</p> <p>22 broad term. I guess I want clarity on</p> <p>23 what you mean "create" is before I answer</p> |

17 (Pages 62 - 65)

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| <p style="text-align: right;">Page 66</p> <p>1 the question.</p> <p>2 Q. The map that you developed on</p> <p>3 Maptitude you provided to Dan Roberts.</p> <p>4 Is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. When did you provide Dan</p> <p>7 Roberts the plan you developed on</p> <p>8 Maptitude?</p> <p>9 A. I don't recall.</p> <p>10 MR. WELLER: I think I'm going</p> <p>11 to object here because, again, you're now</p> <p>12 starting to talk about specific</p> <p>13 communications between Mr. Brown and</p> <p>14 Senator Roberts.</p> <p>15 MR. JORDAN: Same objection.</p> <p>16 Q. Okay. Are you going to follow</p> <p>17 your attorney's advice, Mr. Brown?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 MR. CAMPBELL-HARRIS: I would</p> <p>21 say that the date of the communication is</p> <p>22 not privileged, but we can save that</p> <p>23 for --</p> | <p style="text-align: right;">Page 68</p> <p>1 supposed to do. Sorry.</p> <p>2 I was directed by one of my</p> <p>3 clients to help assist him in the</p> <p>4 redistricting process.</p> <p>5 Q. Okay. Do you recall when you</p> <p>6 worked on the plan following the ask from</p> <p>7 one of your clients?</p> <p>8 A. Not specifically.</p> <p>9 Q. Okay. But you worked on the</p> <p>10 plan at the direction of one of your</p> <p>11 clients?</p> <p>12 A. Or more -- more than one client.</p> <p>13 Q. Okay. Was there more than one</p> <p>14 client who directed you to work on the</p> <p>15 plan that you developed on Maptitude?</p> <p>16 A. What plan are you referring to?</p> <p>17 I mean, because I had more than 30 plans,</p> <p>18 so.</p> <p>19 Q. Okay. The plan that we were --</p> <p>20 scratch that.</p> <p>21 The plan you provided Senator</p> <p>22 Roberts, were there other individuals who</p> <p>23 directed you to develop maps during the</p> |
| <p style="text-align: right;">Page 67</p> <p>1 MR. WELLER: It's not. I'm not</p> <p>2 so concerned, Dayton, about the date.</p> <p>3 It's just that you're starting to go into</p> <p>4 the specific exchange of what documents.</p> <p>5 MR. CAMPBELL-HARRIS: Okay.</p> <p>6 Q. Okay. Let me rephrase the</p> <p>7 question.</p> <p>8 Do you recall what date, Mr.</p> <p>9 Brown, you shared the plan that you</p> <p>10 developed on Maptitude, do you recall</p> <p>11 when you shared that plan with Senator</p> <p>12 Roberts?</p> <p>13 A. I do not.</p> <p>14 Q. Not substance, just the date.</p> <p>15 A. I do not.</p> <p>16 Q. Okay. Why did you develop that</p> <p>17 plan on Maptitude?</p> <p>18 MR. JORDAN: Object to the form</p> <p>19 of the question.</p> <p>20 THE WITNESS: Can he hear you?</p> <p>21 MR. JORDAN: You can answer.</p> <p>22 THE WITNESS: Oh, I can answer.</p> <p>23 A. Sorry. I'm not sure what I was</p> | <p style="text-align: right;">Page 69</p> <p>1 2023 special session?</p> <p>2 A. I mean, that question is a</p> <p>3 complicated question because in the</p> <p>4 redistricting process, maps evolve over</p> <p>5 the course of time from different inputs</p> <p>6 from different people.</p> <p>7 Q. Okay. Did other Alabama state</p> <p>8 legislators offer you input on the maps</p> <p>9 that you were working on?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. During the 2023 special</p> <p>12 session?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. How many people had input</p> <p>15 on the maps that you were working on in</p> <p>16 the 2023 special session?</p> <p>17 A. Maybe two.</p> <p>18 Q. Okay. And was -- scratch that.</p> <p>19 Why do you say maybe two and not</p> <p>20 definitively two?</p> <p>21 A. I only recall two people. There</p> <p>22 may be more, but I don't recall any more</p> <p>23 than two.</p> |

18 (Pages 66 - 69)

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| <p style="text-align: right;">Page 70</p> <p>1 Q. Okay. And this map, the map 2 that you received input on from the two 3 people, is that the same map you offered 4 Dan Roberts? 5 A. I mean, it's a very, very 6 complicated question you're asking, but I 7 guess the answer is yes, but it's not 8 that simple. 9 Q. Okay. Why is it not that 10 simple? 11 A. As I said, maps evolve over the 12 course of time, and it's like when you're 13 trying to accomplish a project that -- 14 you know, one map might have been an 15 original basis and it might have gone a 16 direction that was abandoned and another 17 map maybe would go different. So it's 18 hard to specifically answer that 19 question. Do you know what I mean? I 20 mean, I. 21 Q. Without going into the substance 22 of the asks from these clients, who were 23 the clients that offered you input on</p> | <p style="text-align: right;">Page 72</p> <p>1 A. No. 2 MR. JORDAN: Wait a minute, 3 Dayton. 4 THE COURT REPORTER: Are we 5 going off the record? 6 MR. CAMPBELL-HARRIS: Let's go 7 off the record for a second. 8 (Break taken.) 9 MR. CAMPBELL-HARRIS: We're back 10 on the record. It is 11:29 a.m. Eastern 11 time, 10:29 Central. 12 Q. (By Mr. Campbell-Harris) Mr. 13 Brown, I want to circle back a little bit 14 to questions about your compensation. 15 Do you recall how much you were 16 paid in 2023 for your political 17 consulting services? 18 A. I do not. 19 Q. Okay. But you have records of 20 the payments you received for your 21 political consulting services in 2023? 22 A. Yes. 23 Q. Okay. And when you bill clients</p> |
| <p style="text-align: right;">Page 71</p> <p>1 this map? 2 A. The only two I can definitively 3 say would be Dan Roberts and Will 4 Barfoot. 5 Q. Okay. Without going to the 6 substance of any communications, did 7 Senator Barfoot or Senator Roberts offer 8 you any guidance on how to develop the 9 map? 10 A. Yes. 11 MR. WELLER: Wait. I'm going to 12 object because now you're asking 13 specifically the types of communications 14 that are ongoing here, and for him to 15 testify to that is indirectly revealing 16 the content of the communication. 17 THE WITNESS: Sorry I answered. 18 MR. JORDAN: We object, too. I 19 realize he has already answered it, but 20 please don't go any further on that. 21 Q. Did you work with any 22 nonlegislators on these maps that you 23 developed in the 2023 special session?</p> | <p style="text-align: right;">Page 73</p> <p>1 for the services you provide, what 2 details do you add on those bills? 3 A. I just put "Consulting." 4 Q. That's it? 5 A. That's it. 6 Q. Okay. Do you know whether -- 7 well, scratch that. 8 Are you familiar with the 9 Community of Interest plan? 10 A. I believe so, but I can't 11 remember it. 12 Q. Okay. Do you recall when you 13 first saw the Community of Interest plan 14 in the 2023 special session? 15 A. Not specifically. 16 Q. Okay. Are you familiar with the 17 Livingston 2 plan? 18 A. Vaguely. 19 Q. Okay. Do you recall when you 20 first saw the Livingston 2 plan during 21 the 2023 special session? 22 A. I do not. 23 Q. Okay. And are you familiar with</p> |

19 (Pages 70 - 73)

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| <p style="text-align: right;">Page 74</p> <p>1 the SB5 plan?</p> <p>2 A. Again, yeah, vaguely.</p> <p>3 Q. Okay. Do you recall when you</p> <p>4 first saw the SB5 plan?</p> <p>5 A. I do not.</p> <p>6 Q. Okay. Do you recall whether or</p> <p>7 not it was in June or July of 2023?</p> <p>8 A. Yeah. It would have been during</p> <p>9 the redistricting session.</p> <p>10 Q. Okay. Are you aware of whether</p> <p>11 any map that you drew was introduced as a</p> <p>12 bill during the special session in 2023?</p> <p>13 A. I think so, yes.</p> <p>14 Q. Okay. What bill had a map that</p> <p>15 you drew in it?</p> <p>16 A. Again, drew -- me drawing is not</p> <p>17 an exact representation of what I was</p> <p>18 doing, in my term -- my opinion, but it</p> <p>19 would have been a map that Senator</p> <p>20 Roberts would have introduced.</p> <p>21 Q. Okay. Were there any maps that</p> <p>22 Senator Livingston introduced that you</p> <p>23 drew?</p> | <p style="text-align: right;">Page 76</p> <p>1 Q. Mr. Brown, are you going to</p> <p>2 follow your attorney's advice?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Did clients ask you to</p> <p>5 provide input on any bills or maps during</p> <p>6 the 2023 special session?</p> <p>7 MR. WELLER: I'm going to object</p> <p>8 to that too.</p> <p>9 MR. JORDAN: We do, too, Dayton,</p> <p>10 and I instruct him not to answer.</p> <p>11 Q. Are you going to follow your</p> <p>12 attorney's advice, Mr. Brown?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Did anyone send you any</p> <p>15 bills or maps for your review in 2023</p> <p>16 during the special session?</p> <p>17 A. No.</p> <p>18 Q. Okay. Did you initiate any</p> <p>19 conversations with anyone about</p> <p>20 redistricting bills or maps during the</p> <p>21 special session in 2023?</p> <p>22 A. Well, can you give me an example</p> <p>23 of what "anyone" would be? I mean,</p> |
| <p style="text-align: right;">Page 75</p> <p>1 A. No.</p> <p>2 Q. Okay. And did you work on the</p> <p>3 maps that you drew because you were hired</p> <p>4 to draw or work on those maps?</p> <p>5 A. I think the question of hired</p> <p>6 is -- I offer my clients a wide variety</p> <p>7 of services, and when they ask me for</p> <p>8 things, I often do what they request,</p> <p>9 without compensation sometimes.</p> <p>10 Q. Okay. Were -- scratch that.</p> <p>11 Did some of the clients who you</p> <p>12 provided services to ask you to work on</p> <p>13 any maps for the 2023 special session in</p> <p>14 Alabama?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Which clients were those?</p> <p>17 MR. WELLER: Object.</p> <p>18 MR. JORDAN: Yeah. It's kind of</p> <p>19 a specific, isn't it, Dayton, about the</p> <p>20 communications? We covered the</p> <p>21 legislative privilege. We direct him not</p> <p>22 to answer. How's that?</p> <p>23 MR. CAMPBELL-HARRIS: Okay.</p> | <p style="text-align: right;">Page 77</p> <p>1 that's -- anyone? You mean like if I</p> <p>2 talked to my mother?</p> <p>3 Q. Anyone, correct.</p> <p>4 A. I can't recall specifically who</p> <p>5 I talked to.</p> <p>6 Q. Okay. Did any legislators share</p> <p>7 any bills or maps with you during the</p> <p>8 special session in 2023?</p> <p>9 A. No.</p> <p>10 MR. JORDAN: I think we'd object</p> <p>11 to that.</p> <p>12 MR. CAMPBELL-HARRIS: Okay.</p> <p>13 MR. JORDAN: I'd ask him not to</p> <p>14 answer. I guess he's already said no.</p> <p>15 THE WITNESS: Sorry. I'll</p> <p>16 pause.</p> <p>17 Q. Were you asked to provide any</p> <p>18 testimony during the 2023 special</p> <p>19 session?</p> <p>20 A. No.</p> <p>21 Q. Okay. And did you provide any</p> <p>22 technical assistance to Alabama's</p> <p>23 reapportionment committee in 2023?</p> |

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| <p style="text-align: right;">Page 78</p> <p>1 A. No.</p> <p>2 Q. Did you attend committee</p> <p>3 hearings related to the pass of the 2023</p> <p>4 plan in 2023?</p> <p>5 A. No.</p> <p>6 Q. And if I say "2023 plan," do you</p> <p>7 understand that I'm referring to a plan</p> <p>8 that was signed into law on July 21st,</p> <p>9 2023?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And you weren't retained</p> <p>12 in any capacity by the Alabama Permanent</p> <p>13 Legislative Committee; right?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And the chairs of the</p> <p>16 committee didn't retain or hire you?</p> <p>17 MR. JORDAN: Object to the form</p> <p>18 of that.</p> <p>19 MR. CAMPBELL-HARRIS: I can</p> <p>20 rephrase.</p> <p>21 Q. Did the chair -- did either</p> <p>22 chair of the Alabama Permanent</p> <p>23 Legislative Committee retain or hire you</p> | <p style="text-align: right;">Page 80</p> <p>1 (Discussion held off the record.)</p> <p>2 Q. (By Mr. Campbell-Harris) Mr.</p> <p>3 Brown, did anyone from Alabama's Office</p> <p>4 of Attorney General speak with you about</p> <p>5 or communicate with you about Alabama</p> <p>6 congressional redistricting in 2023?</p> <p>7 A. No.</p> <p>8 Q. Did anyone from the Solicitor</p> <p>9 General's Office communicate with you</p> <p>10 about Alabama's congressional</p> <p>11 redistricting in 2023?</p> <p>12 A. No.</p> <p>13 Q. Did any members of the U.S.</p> <p>14 House of Representatives from Alabama's</p> <p>15 congressional delegation speak with you</p> <p>16 about Alabama congressional redistricting</p> <p>17 in 2023?</p> <p>18 A. No.</p> <p>19 Q. Okay. Did anyone from their</p> <p>20 staff communicate with you about the same</p> <p>21 topic?</p> <p>22 A. No.</p> <p>23 Q. Okay.</p> |
| <p style="text-align: right;">Page 79</p> <p>1 for political consulting services related</p> <p>2 to redistricting?</p> <p>3 A. No.</p> <p>4 Q. Okay. Did you communicate with</p> <p>5 State Senator Lance Bell about Alabama's</p> <p>6 congressional redistricting in 2023?</p> <p>7 A. No.</p> <p>8 Q. Did you communicate with Donnie</p> <p>9 Chesteen about Alabama's congressional</p> <p>10 redistricting in 2023?</p> <p>11 A. No.</p> <p>12 Q. Did you communicate with State</p> <p>13 Senator Jeff Williams about Alabama's</p> <p>14 congressional redistricting in 2023?</p> <p>15 A. No.</p> <p>16 Q. Besides state legislators</p> <p>17 themselves, did you communicate with any</p> <p>18 of their staff about Alabama</p> <p>19 redistricting in 2023?</p> <p>20 A. No.</p> <p>21 Q. Okay.</p> <p>22 THE WITNESS: Did he freeze? It</p> <p>23 froze.</p> | <p style="text-align: right;">Page 81</p> <p>1 MR. JORDAN: Just a second,</p> <p>2 Dayton.</p> <p>3 MR. CAMPBELL-HARRIS: We can go</p> <p>4 off the record for a second.</p> <p>5 (Discussion held off the record.)</p> <p>6 MR. JORDAN: So this -- Dayton,</p> <p>7 your question was anybody from a</p> <p>8 congressional staff communicate with him?</p> <p>9 Was that the question?</p> <p>10 MR. CAMPBELL-HARRIS: Correct,</p> <p>11 yes.</p> <p>12 MR. JORDAN: And I think he</p> <p>13 wants to amend his answer.</p> <p>14 THE WITNESS: Can I amend my</p> <p>15 answer?</p> <p>16 Q. (By Mr. Campbell-Harris) You</p> <p>17 can.</p> <p>18 A. Bill Harris, the state director</p> <p>19 for Barry Moore.</p> <p>20 Q. For Barry Moore, you said?</p> <p>21 A. Yeah.</p> <p>22 Q. Okay. And is that what your</p> <p>23 counsel just spoke with you about off the</p> |

21 (Pages 78 - 81)

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| <p style="text-align: right;">Page 82</p> <p>1 record?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Did you speak with anyone</p> <p>4 from the Republican National Committee,</p> <p>5 the RNC, about Alabama congressional</p> <p>6 redistricting during 2023?</p> <p>7 A. No.</p> <p>8 Q. Did you speak with any other</p> <p>9 political consultants about Alabama's</p> <p>10 congressional redistricting in 2023?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Okay. Is it possible that you</p> <p>13 spoke with other political consultants</p> <p>14 about Alabama redistricting in 2023?</p> <p>15 A. I want to say the answer is no,</p> <p>16 but I can't definitively say no.</p> <p>17 Q. Okay. Fair enough.</p> <p>18 Did you speak with any lobbyists</p> <p>19 about Alabama redistricting in 2023?</p> <p>20 A. No.</p> <p>21 Q. Besides the people that we have</p> <p>22 discussed so far, did you speak with</p> <p>23 anyone else about congressional</p> | <p style="text-align: right;">Page 84</p> <p>1 I mean, I don't remember -- it's possible</p> <p>2 that two or more clients might have been</p> <p>3 in the same room with me, but mostly it</p> <p>4 was me and one client.</p> <p>5 Q. Okay. And not going into the</p> <p>6 substance of conversations, but do you</p> <p>7 recall what was discussed in any of those</p> <p>8 meetings?</p> <p>9 A. Not specifically.</p> <p>10 Q. Okay. Not specifically off the</p> <p>11 top of your head?</p> <p>12 A. I mean, yes, correct.</p> <p>13 Q. Okay. Okay. Let's talk about</p> <p>14 some of the relationships you have with a</p> <p>15 few of the clients. We're going to</p> <p>16 introduce an exhibit that I'm going to</p> <p>17 premark as Exhibit 1, and then I'm going</p> <p>18 to share on the screen, or that my</p> <p>19 colleague is going to share on the</p> <p>20 screen. And it is -- well, I'll ask you</p> <p>21 to identify it when you get a chance.</p> <p>22 MR. JORDAN: Do you have it?</p> <p>23 THE COURT REPORTER: No. I</p> |
| <p style="text-align: right;">Page 83</p> <p>1 redistricting in Alabama in 2023?</p> <p>2 A. No.</p> <p>3 Q. Okay. Did you participate in</p> <p>4 any meetings related to Alabama's 2021</p> <p>5 congressional map?</p> <p>6 A. What type of meetings are you</p> <p>7 referring to? Because I met with</p> <p>8 individual clients about their districts.</p> <p>9 You're saying congressional map?</p> <p>10 Q. Congressional map, correct.</p> <p>11 A. Then the answer is no.</p> <p>12 Q. Okay. Did you participate in</p> <p>13 any meetings with clients about Alabama's</p> <p>14 2023 congressional map?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. When were those meetings,</p> <p>17 to the best of your recollection?</p> <p>18 A. It would have been in that June,</p> <p>19 July, before the session ended, you know.</p> <p>20 Q. Okay. Do you recall who was</p> <p>21 present at any of those meetings?</p> <p>22 A. It would have always been me and</p> <p>23 one client singularly for the most part.</p> | <p style="text-align: right;">Page 85</p> <p>1 don't have anything.</p> <p>2 Q. But in the meantime, Mr. Brown,</p> <p>3 do you take notes at the meetings with</p> <p>4 your clients?</p> <p>5 A. Not normally, no.</p> <p>6 Q. Okay. Do you sometimes take</p> <p>7 notes at the meetings with your clients?</p> <p>8 A. It's possible.</p> <p>9 Q. Okay. Okay. Mr. Brown, have</p> <p>10 you seen this document before?</p> <p>11 (Plaintiff's Exhibit 1 was marked for</p> <p>12 identification and is attached.)</p> <p>13 A. Yes.</p> <p>14 Q. Okay. What is the document?</p> <p>15 And we can scroll down if you need to.</p> <p>16 A. I mean, it looks like the</p> <p>17 subpoena I received to turn over</p> <p>18 documents and communications in regards</p> <p>19 to the redistricting case.</p> <p>20 Q. Okay. Do you recall receiving</p> <p>21 this document?</p> <p>22 A. Is this the official subpoena</p> <p>23 that was delivered to my home?</p> |

22 (Pages 82 - 85)

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2/10/2024 Trial

Milligan Plaintiffs' Exhibit No. 187

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| <p style="text-align: right;">Page 86</p> <p>1 Q. I believe so, yes. 2 A. Then yes. 3 Q. What did you do after receiving 4 the subpoena? 5 A. I met with my attorney. 6 Q. Okay. And did you read the 7 subpoena yourself? 8 A. I did, but I didn't quite 9 understand it. 10 Q. Okay. Besides contacting your 11 attorney, did you contact anyone else 12 after receiving this subpoena? 13 A. I don't recall. 14 Q. Okay. Let's turn to page 5 and 15 paragraph 3. And take a moment to review 16 paragraph 3 and let me know when you're 17 done. 18 A. Well, there's like something 19 covering up some of it on the screen. 20 MR. JORDAN: Scroll down just a 21 little bit. There you go. 22 THE WITNESS: Thank you. 23 (Witness reviews document.)</p> | <p style="text-align: right;">Page 88</p> <p>1 A. Not that I recall. 2 Q. Okay. Did anyone instruct you 3 or your counsel on asserting any other 4 privileges with respect to the documents 5 sought in this case? 6 A. Yeah. I believe that all of the 7 nine that had conversations during that 8 period sent me an e-mail asserting their 9 legislative privilege in regard to this 10 information. 11 Q. Okay. And you're referring to 12 the nine legislators who filed the motion 13 to quash? 14 A. Yes. 15 Q. Okay. 16 MR. CAMPBELL-HARRIS: We can 17 pull this down, and we're going to put up 18 another exhibit that I'm going to mark as 19 Exhibit 2. 20 Q. Do you see the document, Mr. 21 Brown? 22 (Plaintiff's Exhibit 2 was marked for 23 identification and is attached.)</p> |
| <p style="text-align: right;">Page 87</p> <p>1 A. I mean, I'm reading it. I don't 2 understand what it says, so. Number 3? 3 Q. Yes, number 3. 4 A. Yeah. I'm reading it, but I 5 still don't quite understand what the 6 intention is of it. 7 Q. Okay. You see that it says up 8 here in the first sentence after the 9 first comma, it asks that "You shall 10 serve upon the undersigned counsel a 11 written list that identifies each such 12 document and states the grounds on which 13 each such document is asserted to be 14 privileged or immune from disclosure"? 15 A. Yes. 16 Q. Okay. 17 A. I see that. 18 Q. Okay. Did anyone instruct you 19 or your counsel on asserting 20 attorney-client privilege for documents 21 with respect to this case? 22 A. Attorney-client privilege? 23 Q. Correct.</p> | <p style="text-align: right;">Page 89</p> <p>1 A. Yes. 2 Q. Okay. Can you read the contents 3 of the document okay? 4 A. Mostly, yes. 5 Q. Okay. 6 A. I'm going to have to get a 7 little closer, but I got it. Go ahead. 8 Q. Okay. 9 MR. CAMPBELL-HARRIS: I'm going 10 to ask that my colleague open up -- 11 expand a little bit so Mr. Brown can 12 better see the document. 13 THE WITNESS: That's better. 14 MR. CAMPBELL-HARRIS: Thank you 15 so much. 16 Q. What is this document, Mr. 17 Brown? 18 A. It appears to be a text exchange 19 with me and Senator Steve Livingston. 20 Q. Okay. You see, though, that on 21 June 11th, 2023, you sent Senator 22 Livingston a text; right? 23 A. It appears so, yes.</p> |

23 (Pages 86 - 89)

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| <p style="text-align: right;">Page 90</p> <p>1 Q. Okay. Were there any 2 communications between you and Senator 3 Livingston about Alabama redistricting 4 preceding this June 11th, 2023, text? 5 A. I don't recall any. 6 Q. Okay. Were there -- okay. 7 And you say here that you have 8 eight different maps that you are running 9 performance numbers on. Is that 10 accurate? 11 A. It appears so, yes. 12 Q. Okay. Why were you running 13 those performance numbers? 14 A. I was attempting to ascertain 15 that the maps that were determined, 16 whether they were going to meet the 17 standards of the Court. 18 Q. Okay. What standards of the 19 Court are you referring to? 20 A. I mean, roughly, to create an 21 opportunity district. 22 Q. Okay. An opportunity district 23 for black voters in Alabama?</p> | <p style="text-align: right;">Page 92</p> <p>1 A. No. 2 Q. Okay. Did Senator Livingston 3 hire you to work on Alabama redistricting 4 in 2023? 5 A. No. 6 Q. Okay. Do you know what maps are 7 being referred to here? 8 A. Not specifically. 9 Q. Okay. Let's scroll down a 10 little bit, the same page. 11 You text Senator Livingston 12 again on June 14th, 2023; right? 13 A. Looks like it, yeah. 14 Q. Okay. Why did you text him on 15 June 14th? 16 A. I don't recall why. 17 Q. Okay. Did you run these 18 performance numbers referenced in the 19 June 11th text as part of the consulting 20 services you offered your clients? 21 A. I would say yes. 22 Q. Okay. 23 A. Well, let me clarify that. I</p> |
| <p style="text-align: right;">Page 91</p> <p>1 A. Yeah, I guess. Yes. I mean, 2 I'm not a definitive person on what that 3 meant, but yes. I mean, I didn't have 4 clear understanding of what that was 5 probably at that time, and I'm still not 6 so sure I do still have clear 7 understanding on what that means. 8 Q. Okay. Why did you send Senator 9 Livingston this text? 10 A. I don't recall specifically 11 other than that I was developing 12 congressional -- I mean, at least working 13 on congressional plans to work through 14 the Court could accomplish -- that would 15 work for the Court. Excuse me. Let me 16 clean that up. 17 Q. Okay. Were you asked to run 18 these performance numbers by Senator 19 Livingston? 20 A. No. 21 Q. Okay. Did someone ask that -- 22 did someone else ask you to run these 23 performance numbers?</p> | <p style="text-align: right;">Page 93</p> <p>1 did not run any performance numbers. 2 Q. Who ran the performance numbers? 3 A. There's a gentleman by the name 4 of Joe Domnanovich that ran them for me. 5 Q. Okay. We'll get to that a 6 little later. 7 So on June 14th, did you and 8 Senator Livingston have a meeting 9 planned? 10 A. I don't think I did. I can't -- 11 I can't recall specifically. 12 Q. Okay. Okay. So you say here, 13 "Coming through?" What is that referring 14 to? 15 A. I'm assuming that means was he 16 driving back from Montgomery to his home. 17 Q. Okay. And then why did you say 18 that "I'm clear the rest of the day"? 19 A. I make myself available for my 20 clients as needed. 21 Q. Okay. And do you understand 22 what is being referred to here by Senator 23 Livingston as "monkey town"?</p> |

24 (Pages 90 - 93)

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| <p style="text-align: right;">Page 94</p> <p>1 A. I'm assuming he's referring to 2 Montgomery. 3 Q. Okay. Did you and Senator 4 Livingston and Dan -- is this Dan Roberts 5 who is being referred to in your last 6 text on -- 7 A. I'm assuming it is, yes. 8 Q. Okay. Did you, Senator 9 Livingston, and Dan Roberts have a 10 meeting, communication of sorts, the 11 evening of June 14th? 12 A. I do not recall, but I don't 13 believe we did. 14 Q. Okay. Why did you say, "Dan and 15 I are" -- I guess that's a typo -- "free 16 anytime this evening"? 17 A. I cannot recall specifically. 18 Q. Okay. On June 17th, Senator 19 Livingston asked to call you. Is that 20 correct? 21 A. I believe that that was a 22 response to -- I had called him, and it 23 was one of those automated responses. So</p> | <p style="text-align: right;">Page 96</p> <p>1 don't know this verbatim -- that CD 1 was 2 trying to -- they were trying to keep CD 3 1 intact with Mobile and Baldwin as a 4 coastal community of interest, and I 5 believe that's what I'm referring to, 6 keeping Mobile, Baldwin, CD 1 as a 7 community of interest. 8 Q. Okay. Did you have a phone call 9 with Senator Livingston on -- well, let's 10 scroll down a little bit. On here, did 11 you have a phone call with Senator 12 Livingston on June 21st, 2023? 13 A. I don't know. 14 Q. Pardon me? 15 A. I don't know. 16 Q. Okay. Let's scroll down to the 17 June 27th, 2023, text here. 18 On June 27, 2023, you're also 19 trying to initiate a conversation with 20 Senator Livingston again; correct? 21 A. Correct. 22 Q. Did he respond to your June 23 27th, 2023, message? And we can scroll</p> |
| <p style="text-align: right;">Page 95</p> <p>1 I don't think -- 2 Q. Got it. 3 A. -- he initiated it. But I can't 4 specifically understand what I wanted to 5 talk to him about. 6 Q. Okay. But you initiated a call 7 to Senator Livingston on June -- 8 A. I believe that that's what that 9 is, but I don't know that specifically. 10 Q. Okay. Did you both have a phone 11 call later that day? 12 A. I don't know. 13 Q. Okay. Later on, on June 17th, 14 you text Senator Livingston about having 15 a workable map that you say, "mostly 16 protects what Randy is wanting in CD 1." 17 I'm wondering what you mean by 18 that. 19 A. Can you -- 20 Q. Let's scroll down a little bit. 21 I don't think we see it on the screen, 22 actually. 23 A. It was my understanding -- and I</p> | <p style="text-align: right;">Page 97</p> <p>1 down a little bit. 2 A. I don't -- I don't know, but I 3 do not believe he did. 4 Q. Okay. So he didn't call you 5 back in response or e-mail you? 6 A. Oh, I know he didn't e-mail me, 7 but I don't -- I cannot -- I don't recall 8 talking to him about it. 9 Q. Okay. Why do you say you know 10 he didn't e-mail you? 11 A. Because in this process I've 12 gone through my communications with 13 legislators via e-mail and I know what 14 they are. 15 Q. Okay. On the next day, on June 16 28th, you texted Senator Livingston 17 again; correct? 18 A. Looks like it, yeah. 19 Q. Okay. And he responded 20 "Thanks"? 21 A. Yeah. Yes. 22 Q. Okay. Did you both have a 23 follow-up discussion in regards to your</p> |

25 (Pages 94 - 97)

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| <p style="text-align: right;">Page 98</p> <p>1 final text message? "If you want to see 2 a map, let me know. Would 41.6 BVAP 3 work?" Did you both have a discussion 4 about that information that day? 5 A. I do not know, but I don't 6 believe we did. 7 Q. Okay. And on July 20th, 2023, 8 you initiated another conversation with 9 Senator Livingston? 10 A. Yes. 11 Q. And what was his response? 12 A. It looks like a check mark. 13 Q. Did he respond in any other way 14 over the phone? 15 A. I don't -- I don't know. I 16 don't remember. 17 Q. Okay. Okay. And then on July 18 21st, you reached out to Senator 19 Livingston again? 20 A. Yes. 21 Q. And did he respond to your 22 message? 23 A. Not via text. I don't know. I</p> | <p style="text-align: right;">Page 100</p> <p>1 Senator Livingston via e-mail at all? 2 A. Sometimes. 3 Q. Okay. And in those September 4 13th, September 19th, September 20th, it 5 looks like, if we scroll down a little 6 bit further, September 22nd messages, you 7 shared documents with Senator Livingston; 8 correct? 9 A. Yes. That's what it appears 10 like. 11 Q. Okay. He did not request those 12 documents from you? 13 A. He did not. 14 Q. Did he respond to your messages 15 with the documents with a phone call? 16 A. I don't -- I don't recall. 17 Q. Okay. Did he respond in person 18 to the messages you sent with documents? 19 A. No. 20 Q. Okay. Scroll down a little bit 21 to September 26, 2023. So here, you 22 initiate another conversation with 23 Senator Livingston; correct?</p> |
| <p style="text-align: right;">Page 99</p> <p>1 don't think so, not there. 2 Q. Okay. He could have responded 3 in another form? Is that what you're 4 saying? 5 A. It's possible, but I don't 6 remember. 7 Q. Okay. Besides responding with a 8 phone call, are there other means by 9 which Senator Livingston would respond to 10 your text messages? 11 A. No. 12 Q. Okay. On September 12th, you 13 initiated another conversation with 14 Senator Livingston; right? 15 A. Yes. 16 Q. And again on -- let's scroll 17 down a little bit -- on September 13th? 18 A. Yes. 19 Q. And you initiate another 20 conversation with Senator Livingston on 21 September 19th? 22 A. Appears so, yes. 23 Q. Okay. Do you communicate with</p> | <p style="text-align: right;">Page 101</p> <p>1 A. Yes. 2 Q. Okay. Why did you send Senator 3 Livingston a statement from Joe Reed of 4 the Alabama Democratic Conference? 5 A. I provide my clients with 6 information that I see that I think that 7 they are wanting to see. 8 Q. Okay. Let's scroll down a 9 little bit. You say "power grab" here. 10 What do you mean by that? 11 A. To the best of my recollection, 12 it would be that it was a Democrat power 13 grab to try to make sure they had another 14 Democrat seat. 15 Q. Okay. On October the 3rd, 2023, 16 you initiate another conversation with 17 Senator Livingston? 18 A. It appears so, yes. 19 Q. And you say: "He can't let it 20 go. Can he?" Correct? 21 A. Yes. 22 Q. Who are you referring to here? 23 A. I have no idea.</p> |

26 (Pages 98 - 101)

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| <p style="text-align: right;">Page 102</p> <p>1 Q. Okay. Do you know what this</p> <p>2 "he" cannot let go of?</p> <p>3 A. I have no idea what that text</p> <p>4 message was about.</p> <p>5 Q. Okay. Do you know whether</p> <p>6 Senator Livingston responded to that text</p> <p>7 message?</p> <p>8 A. I do not recall anything with</p> <p>9 regard to that text message.</p> <p>10 Q. Okay. And on October 12th,</p> <p>11 2023, you initiate another conversation</p> <p>12 with Senator Livingston?</p> <p>13 A. Yes.</p> <p>14 Q. And you share a CNN article;</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. Why did you share this article</p> <p>18 with Senator Livingston?</p> <p>19 A. Again, from time to time, if I</p> <p>20 see something that is interesting to my</p> <p>21 clients, I share that with my clients.</p> <p>22 Q. Okay. Do you -- when you find</p> <p>23 something interesting that you think will</p> | <p style="text-align: right;">Page 104</p> <p>1 Q. Okay. Did you bill Senator</p> <p>2 Livingston for these communications and</p> <p>3 materials that you were sharing with him</p> <p>4 in this text message thread?</p> <p>5 A. I mean -- I mean, I'm going to</p> <p>6 answer this question, but I bill him for</p> <p>7 consulting advice I give him. I don't</p> <p>8 bill him for anything specifically.</p> <p>9 Q. Okay.</p> <p>10 A. If I bill any of my clients.</p> <p>11 Q. The information you shared with</p> <p>12 Senator Livingston in this exhibit, did</p> <p>13 you bill Senator Livingston for the</p> <p>14 information you provided?</p> <p>15 A. I don't -- I don't recall.</p> <p>16 Possibly.</p> <p>17 Q. Okay. And would you have a copy</p> <p>18 of that bill if you had a bill?</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 MR. CAMPBELL-HARRIS: Okay. We</p> <p>22 can pull this exhibit down. And I'm</p> <p>23 going to put up another exhibit that I'm</p> |
| <p style="text-align: right;">Page 103</p> <p>1 be engaging to your clients, why do you</p> <p>2 share those materials with them?</p> <p>3 A. Because I think that that's an</p> <p>4 interest that they -- mostly, I only</p> <p>5 share things that I believe they're</p> <p>6 interested in.</p> <p>7 Q. Okay. Is that to help maintain</p> <p>8 the relationships with the clients?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Have you initiated any</p> <p>11 conversations with Senator Livingston</p> <p>12 since October 12th, 2023?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Do you recall when you</p> <p>15 initiated those conversations?</p> <p>16 A. Not specifically. I speak to</p> <p>17 him often.</p> <p>18 Q. Let me narrow it a little bit.</p> <p>19 Have you initiated any conversations with</p> <p>20 Senator Livingston since October 12th,</p> <p>21 2023, about Alabama's congressional</p> <p>22 redistricting?</p> <p>23 A. Not that I recall.</p> | <p style="text-align: right;">Page 105</p> <p>1 going to mark as Exhibit 3.</p> <p>2 Q. Okay. Mr. Brown, can you tell</p> <p>3 what this -- do you know what this</p> <p>4 document is that I'm sharing with you?</p> <p>5 (Plaintiff's Exhibit 3 was marked for</p> <p>6 identification and is attached.)</p> <p>7 A. Well, I read what it is on the</p> <p>8 screen.</p> <p>9 Q. Okay. Do you recognize this</p> <p>10 document?</p> <p>11 A. I've never seen it before in</p> <p>12 this -- I mean, I don't -- I've never</p> <p>13 seen this document before.</p> <p>14 Q. Okay. Let's scroll down to page</p> <p>15 3. Do you recognize this e-mail?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And what is this e-mail?</p> <p>18 We can scroll down a little bit if it's</p> <p>19 easier.</p> <p>20 A. Yeah. It appears to be that</p> <p>21 he's -- I'm claiming legislative</p> <p>22 privilege on my communications after I</p> <p>23 was handed the subpoena.</p> |

27 (Pages 102 - 105)

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| <p style="text-align: right;">Page 106</p> <p>1 Q. Okay. Do you see that there are 2 three individuals copied on this e-mail 3 though? 4 A. Yes. 5 Q. Okay. Who are they? 6 A. Bert Jordan is my attorney, and 7 I believe the other two are attorneys for 8 the legislature. I don't know 9 specifically. 10 Q. There's also an attachment to 11 this e-mail note titled "RedState 12 Strategies doc-April 5th, 2024." 13 What is that attachment? 14 A. I don't know, unless that was a 15 copy of the original subpoena. 16 Q. Okay. Are there -- you see this 17 e-mail note. It's from Dan Roberts? 18 A. Yes. 19 Q. Okay. Are there communications 20 between you and Senator Roberts about the 21 subpoena referenced here on page 3 that 22 predate April 6th, 2024? 23 A. I don't believe so.</p> | <p style="text-align: right;">Page 108</p> <p>1 phone conversation happened? 2 A. I do not. 3 Q. Okay. Did anyone else 4 participate in that phone conversation? 5 A. No. 6 Q. Okay. Do you recall how your 7 relationship with Senator Roberts began? 8 A. Yes. 9 Q. How did it begin? 10 A. He hired me to be his general 11 political consultant after he became a 12 candidate for Senate District 15 in 2018, 13 17, '18, sometime in there, for that 14 cycle. I don't remember specifically. 15 Q. Okay. Do you -- backtracking a 16 little bit. Do you recall how your 17 relationship with Senator Livingston also 18 started? 19 A. Yes. He hired me to be his 20 general political consultant before he 21 ran for office the first time. I'm 22 thinking 2013, 2014. 23 Q. Okay. Let's scroll to the</p> |
| <p style="text-align: right;">Page 107</p> <p>1 Q. Okay. Between April 6th and 2 April 13th of 2024, did you communicate 3 with Senator Roberts about the subpoena 4 you received -- 5 A. Can you repeat the -- 6 Q. -- outside of this e-mail 7 exchange? Sorry. 8 A. Can you repeat the question? 9 Q. Yes. Between the dates of April 10 6th, 2024, and April 13th, 2024, did you 11 communicate with Senator Roberts about 12 the subpoena you received from the 13 plaintiffs in this case outside of this 14 e-mail exchange? 15 A. I believe I had a phone 16 conversation telling him that he was 17 going to be getting the subpoena and to 18 check his e-mail. 19 Q. Okay. Did you discuss anything 20 else with Senator Roberts on that phone 21 conversation? 22 A. No. 23 Q. Okay. Do you recall when that</p> | <p style="text-align: right;">Page 109</p> <p>1 bottom of page 3 which kind of carries 2 over to page 4. 3 A. That explains it. 4 Q. This is a note you sent Dan; 5 correct? 6 A. Yes. 7 Q. Okay. And here, you write, 8 "From my initial review of my record of 9 communications there are items responsive 10 to the subpoena." Correct? 11 A. Correct. 12 Q. Okay. You then suggest the 13 materials are rather irrelevant or are 14 "subject to privilege from production on 15 the ground that they are part of your 16 legislative privilege," "your" being Dan 17 Roberts'; correct? 18 A. Correct. 19 Q. How did you determine that the 20 materials you're referring to here are 21 potentially subject to legislative 22 privilege? 23 A. My attorney, Bert Jordan,</p> |

28 (Pages 106 - 109)

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| <p style="text-align: right;">Page 110</p> <p>1 advised me of such.</p> <p>2 Q. Okay. Did you do anything else?</p> <p>3 A. No.</p> <p>4 Q. Okay.</p> <p>5 A. Well, wait a second. Reform</p> <p>6 that -- what do you mean by "anything</p> <p>7 else"?</p> <p>8 Q. Did you do anything else to</p> <p>9 determine whether or not the materials</p> <p>10 you're referring to in this e-mail note</p> <p>11 are potentially subject to legislative</p> <p>12 privilege?</p> <p>13 A. I mean, I did, after I got the</p> <p>14 subpoena, meet with my counsel, and we</p> <p>15 went through all of my records to</p> <p>16 determine what could possibly be</p> <p>17 relevant, and that is how that was</p> <p>18 determined what could be deemed relevant.</p> <p>19 Q. Okay. Did you and Senator</p> <p>20 Roberts have communications about the</p> <p>21 litigation over HB1, the congressional</p> <p>22 plan passed in Alabama in 2021?</p> <p>23 A. I mean, I communicate with a lot</p> | <p style="text-align: right;">Page 112</p> <p>1 redistricting in Alabama?</p> <p>2 A. Not specifically, no.</p> <p>3 Q. Is it possible that you and</p> <p>4 Senator Roberts communicated about</p> <p>5 congressional redistricting in Alabama</p> <p>6 before June 8th, 2023?</p> <p>7 A. It's possible.</p> <p>8 Q. Okay. Let's scroll up again to</p> <p>9 page -- up higher on page 3 to your</p> <p>10 response.</p> <p>11 The second sentence of the first</p> <p>12 full paragraph, you say, "Thank you for</p> <p>13 affording me the" -- or Senator Roberts</p> <p>14 said to you, "Thank you for affording me</p> <p>15 the opportunity to reiterate that I do in</p> <p>16 fact wish to maintain and continue to</p> <p>17 invoke legislative privilege over all</p> <p>18 applicable interactions, communications,</p> <p>19 conversations, work product, documents,</p> <p>20 and records you have or are privy to as a</p> <p>21 result of your engagement with me in</p> <p>22 furtherance of my legislative-related</p> <p>23 activities."</p> |
| <p style="text-align: right;">Page 111</p> <p>1 -- Senator Roberts a lot, so I'm assuming</p> <p>2 it's probably yes, but I communicate with</p> <p>3 him with a wide variety of topics.</p> <p>4 Q. Okay. Do you recall who</p> <p>5 initiated those conversations about the</p> <p>6 litigation over HB1 between you and</p> <p>7 Senator Roberts?</p> <p>8 A. No.</p> <p>9 Q. Okay. And I know you said you</p> <p>10 communicate with Senator Roberts a lot,</p> <p>11 but do you recall any rough specific</p> <p>12 instances of when you had those</p> <p>13 communications about the litigation over</p> <p>14 HB1 with Senator Roberts?</p> <p>15 A. No.</p> <p>16 Q. Okay. Did you and Senator</p> <p>17 Roberts have any communications about the</p> <p>18 litigation over the 2023 plan following</p> <p>19 its enactment on July 21st, 2023?</p> <p>20 A. I don't recall.</p> <p>21 Q. Okay. Do you recall when in</p> <p>22 2023 you and Senator Roberts began</p> <p>23 communicating about congressional</p> | <p style="text-align: right;">Page 113</p> <p>1 Did I read that correctly?</p> <p>2 A. It appears so.</p> <p>3 Q. Okay. You notice that Senator</p> <p>4 Roberts uses the word "reiterate" here.</p> <p>5 I'm wondering, when did he first tell you</p> <p>6 he wanted to invoke legislative privilege</p> <p>7 over materials in this case?</p> <p>8 A. I don't recall.</p> <p>9 Q. Okay. Did he tell you previous</p> <p>10 to -- prior to this e-mail that he wanted</p> <p>11 to invoke legislative privilege over</p> <p>12 those materials referenced in this e-mail</p> <p>13 note in this case?</p> <p>14 A. I don't -- I don't recall.</p> <p>15 Q. Okay. Let's go to the second</p> <p>16 paragraph. And take a moment to review</p> <p>17 it, and let me know when you're done.</p> <p>18 A. The second -- "When possible,"</p> <p>19 that paragraph?</p> <p>20 Q. Yes. It starts with "When</p> <p>21 possible."</p> <p>22 (Witness reviews document.)</p> <p>23 A. Okay.</p> |

29 (Pages 110 - 113)

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| <p style="text-align: right;">Page 114</p> <p>1 Q. Okay. Did you send Senator 2 Roberts a list of potentially privileged 3 documents, the itemized descriptive index 4 of records? 5 A. No. 6 MR. JORDAN: We sent him a 7 privilege log. 8 A. No, no. I mean, the question 9 was did I send it. No. But my attorney 10 did. 11 Q. Okay. 12 A. I mean, you have to ask the 13 question -- I mean, I'm answering the 14 question you asked. Sorry. 15 Q. Did you, through counsel, send 16 Senator Roberts the itemized list 17 referenced here? 18 A. I believe so, yes. 19 Q. Okay. Do you know how Senator 20 Roberts determined whether the materials 21 you listed in that index of records were 22 privileged -- 23 A. I do not.</p> | <p style="text-align: right;">Page 116</p> <p>1 Roberts determined his own -- his own 2 communications. Sorry. 3 Q. No problem. Thank you. 4 Did you, independent of working 5 with counsel, try to determine whether 6 any materials in the itemized and 7 descriptive index of records that you 8 shared with Senator Roberts were 9 privileged now? 10 A. I mean, I reviewed the 11 information, but it wasn't for me to 12 determine whether it was privileged 13 because it wasn't me. 14 Q. Okay. So the basis of 15 privilege, that came from Senator Roberts 16 to you? 17 A. Correct. That's my 18 understanding. Right. 19 Q. Okay. Thank you. 20 Okay. Let's turn -- let's go 21 down to page 7 starting with "Dear Will." 22 And please take a moment to review, and 23 let me know when you're ready to talk</p> |
| <p style="text-align: right;">Page 115</p> <p>1 Q. -- or were potentially 2 privileged? 3 A. I do not. 4 Q. Okay. What communication did 5 you receive back from Senator Roberts 6 after sending him the descriptive index 7 of records? 8 A. Again, I didn't send it. My 9 counsel did. So I did not see any 10 responses unless my counsel saw a 11 response. 12 Q. Okay. So you do not know 13 whether or not Senator Roberts responded 14 to any list of potentially privileged 15 materials that you, through counsel, sent 16 him? 17 A. I do not have knowledge of that, 18 no. 19 Q. Okay. And you don't know, then, 20 how Senator Roberts indicated which 21 materials were privileged and which were 22 not? 23 A. I can't speak to how Senator</p> | <p style="text-align: right;">Page 117</p> <p>1 about this e-mail note. 2 A. Okay. I'm ready. 3 Q. Okay. Are there communications 4 between you and Senator Barfoot about 5 this subpoena that predate -- pardon me? 6 A. I didn't say anything. 7 Q. Oh. Are there communications 8 between you and Senator Barfoot about the 9 subpoena that predate April 6? 10 A. The only thing I can say is 11 every single one of them I've telephoned 12 to check their e-mail that it was coming 13 so that they knew it was coming. Other 14 than that, no. 15 Q. Okay. So for each of the nine 16 legislators referenced in that motion to 17 quash, you e-mailed them or called them 18 after receiving the subpoena to let them 19 know that you received the subpoena? 20 A. Well the timeline is not exactly 21 that specific, but it would have been 22 that I would have met with my counsel, 23 that we were going to send an e-mail.</p> |

30 (Pages 114 - 117)

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| <p style="text-align: right;">Page 118</p> <p>1 Several of these people don't check their 2 e-mail on a regular basis, so I wanted 3 them to make sure they checked their 4 e-mails so they knew it was coming. So 5 the purpose of the call prior to me 6 sending an e-mail was that there was 7 going to be an e-mail they needed to 8 review, and that was it. 9 Q. Okay. In the fourth paragraph 10 on page 7, you again suggest that the 11 materials -- that materials might be 12 responsive to the subpoena but subject to 13 privilege. Is that accurate? 14 A. Well, this was -- this was 15 drafted by my attorney to send to my 16 clients, so yes, it is accurate. But it 17 was drafted by my attorney to send to my 18 clients. I did not draft it without 19 consulting my attorney. 20 Q. Okay. 21 MR. JORDAN: And do not -- do 22 not speak to him of the substance of your 23 communications with your lawyers unless</p> | <p style="text-align: right;">Page 120</p> <p>1 to determine whether or not the materials 2 to any of the legislators were privileged 3 or not? 4 A. No. 5 Q. Okay. Did you and Senator 6 Barfoot have any communications, without 7 going into the substance of those 8 communications, of any legislation that 9 you had an input on during the 2023 10 redistricting cycle? 11 MR. WELLER: I'm going to object 12 to that because you're asking about the 13 specific basis of the communications. 14 MR. JORDAN: Same objection. 15 Don't answer. 16 Q. Are you going to follow your 17 attorney's advice, Mr. Brown? 18 A. Yes. 19 Q. Okay. Did you communicate with 20 Senator Barfoot about redistricting 21 legislation during the 2023 cycle, 22 without going to the substance -- 23 MR. WELLER: Same objection.</p> |
| <p style="text-align: right;">Page 119</p> <p>1 you want to waive your attorney-client 2 privilege. 3 THE WITNESS: Okay. So I did -- 4 I messed up? All right. 5 Q. And I apologize, Mr. Brown. A 6 lot of these questions are going to sound 7 repetitive, but -- 8 A. Sure. 9 Q. -- I just want to be thorough. 10 So, how did you initially 11 determine that the materials you're 12 referring to here on page 7 to Senator 13 Barfoot, how did you determine that those 14 materials are potentially subject to 15 legislative privilege? 16 A. As I previously stated, I met 17 with my attorney. We looked at my 18 records. We determined what we thought 19 was relevant and created that -- that 20 document. And then that was how it was 21 determined who was going to get this 22 e-mail. 23 Q. Okay. Did you do anything else</p> | <p style="text-align: right;">Page 121</p> <p>1 Q. -- of those communications? 2 MR. WELLER: Same objection. 3 MR. JORDAN: We object as well, 4 Dayton. 5 Don't answer. 6 Q. All right. You're going to 7 follow your attorney's advice, Mr. Brown? 8 A. Yes. 9 Q. Okay. Did you provide political 10 consulting services to Senator Barfoot 11 during the 2023 Alabama redistricting 12 cycle? 13 A. I provide political consulting 14 services to Senator Barfoot on an ongoing 15 basis. 16 Q. Okay. Including during the 2023 17 redistricting cycle? 18 A. I assume, yes. Yes. 19 Q. Okay. Did you and Senator 20 Barfoot have communications about the 21 litigation over HB1 after HB1 passed in 22 2021? 23 THE WITNESS: You want me to</p> |

31 (Pages 118 - 121)

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| <p style="text-align: right;">Page 122</p> <p>1 answer that?</p> <p>2 MR. JORDAN: I'm not going to</p> <p>3 say anything.</p> <p>4 THE WITNESS: What?</p> <p>5 MR. JORDAN: Go ahead.</p> <p>6 A. I believe so, yes.</p> <p>7 Q. Okay. Do you recall who</p> <p>8 initiated those conversations about the</p> <p>9 litigation over HB1?</p> <p>10 A. I do not.</p> <p>11 Q. Okay. Do you recall whether you</p> <p>12 billed Senator Barfoot for those</p> <p>13 conversations about the litigation over</p> <p>14 HB1?</p> <p>15 A. I do not.</p> <p>16 Q. Okay.</p> <p>17 A. But again, as I said, I don't</p> <p>18 bill on specifically issues. I bill on</p> <p>19 broad consulting. It's not specific.</p> <p>20 Q. What do you mean by "broad</p> <p>21 consulting"?</p> <p>22 A. If I'm to bill a client, I bill</p> <p>23 them on my time, not on a issue-by-issue</p> | <p style="text-align: right;">Page 124</p> <p>1 them informed of what I see that I think</p> <p>2 they'll find relevant.</p> <p>3 Q. Okay. Are there any clients</p> <p>4 that you do not bill?</p> <p>5 A. No.</p> <p>6 Q. Okay. Going back to questions</p> <p>7 about Senator Barfoot specifically, did</p> <p>8 you and him have communications about the</p> <p>9 litigation over the 2023 plan following</p> <p>10 its enactment on July 21st, 2023?</p> <p>11 A. I don't recall specifically.</p> <p>12 Q. Okay. Do you recall when in</p> <p>13 2023 you and Senator Barfoot began</p> <p>14 communicating about congressional</p> <p>15 redistricting in Alabama?</p> <p>16 A. It would have been around the</p> <p>17 time of the redistricting special</p> <p>18 session, but I can't recall specifically.</p> <p>19 Q. Is it possible that those</p> <p>20 communications began before June 8th,</p> <p>21 2023?</p> <p>22 A. It is possible.</p> <p>23 Q. Okay. Let's scroll up to page</p> |
| <p style="text-align: right;">Page 123</p> <p>1 basis because we talk on a wide variety</p> <p>2 of issues.</p> <p>3 Q. When you bill clients by time,</p> <p>4 does that include text message exchanges?</p> <p>5 A. It could.</p> <p>6 Q. Okay. Does that include phone</p> <p>7 conversations?</p> <p>8 A. It could.</p> <p>9 Q. Okay. And can that include</p> <p>10 meetings in person?</p> <p>11 A. It could.</p> <p>12 Q. Okay. And that could include</p> <p>13 working on maps in Maptitude?</p> <p>14 A. It could.</p> <p>15 Q. Okay. Could that include also</p> <p>16 sharing news articles that the client</p> <p>17 might find interesting?</p> <p>18 A. I probably would not bill on me</p> <p>19 offering information to them.</p> <p>20 Q. Okay.</p> <p>21 A. But I perceive that as a part of</p> <p>22 my full-service opportunity to be a</p> <p>23 consultant for them, that I try to keep</p> | <p style="text-align: right;">Page 125</p> <p>1 6. So Senator Barfoot here, he, like</p> <p>2 Senator Roberts, reiterates his wish to</p> <p>3 invoke legislative privilege.</p> <p>4 Do you recall when he first told</p> <p>5 you he wanted to invoke legislative</p> <p>6 privilege in this case?</p> <p>7 A. It would have been on receipt of</p> <p>8 this e-mail.</p> <p>9 Q. Okay. That was the first time?</p> <p>10 A. I believe that to be the case,</p> <p>11 but I don't recall.</p> <p>12 Q. Okay. And in the second</p> <p>13 paragraph, you again reference an</p> <p>14 itemized and descriptive index of</p> <p>15 records. Is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. Did you send Senator Barfoot a</p> <p>18 list of potentially privileged documents?</p> <p>19 A. Yes, through my legal counsel.</p> <p>20 Q. Okay. And do you recall how</p> <p>21 through legal counsel you went about</p> <p>22 determining whether the documents you</p> <p>23 shared with him were privileged?</p> |

32 (Pages 122 - 125)

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| <p style="text-align: right;">Page 126</p> <p>1 A. As I stated earlier, we went 2 through the process of the requests that 3 were made in the subpoena to determine 4 what was relevant. 5 Q. Okay. Did you do that together? 6 A. Me and my legal counsel? 7 Q. Correct. 8 A. Yes. Or with the staffer of 9 his. 10 Q. Okay. Do you know how Senator 11 Barfoot determined whether the materials 12 you listed in the index of records were 13 privileged? 14 A. I cannot speak to how Senator 15 Barfoot determined that, no. 16 Q. Okay. Did you receive 17 communications back from Senator Barfoot 18 after you, through legal counsel, sent 19 him the itemized index of records? 20 A. In regard to this or in general? 21 Q. In regards to the assertion of 22 privilege. 23 A. No.</p> | <p style="text-align: right;">Page 128</p> <p>1 A. Yes. 2 Q. Okay. Okay. And this is -- 3 okay. Can we scroll up to page 8? I 4 just want to -- yeah. 5 So here, it says former Senator 6 Clay Scofield, but the e-mail, it's 7 actually referencing Mack Butler. Is 8 that right? 9 A. It appears. Like I said, I've 10 never seen this document before me. 11 Q. Okay. Let's go to page 25, 12 where I believe you have an e-mail from 13 former Senator Scofield. 14 A. Okay. 15 Q. Okay. Does this look like an 16 e-mail to Senator -- former Senator 17 Scofield, Mr. Brown? 18 A. Yes. 19 Q. Okay. And are there any 20 communications between you and former 21 Senator Scofield about the subpoena that 22 predate April 6? 23 A. Yes.</p> |
| <p style="text-align: right;">Page 127</p> <p>1 Q. Okay. Okay. Let's go down to 2 page 9. 3 MR. WELLER: Dayton, can we take 4 a break? We've been going for about an 5 hour and a half. 6 MR. CAMPBELL-HARRIS: Yes, 7 absolutely. 8 MR. WELLER: Let's take ten. 9 Q. Sound good to you, Mr. Brown? 10 A. Sure. 11 MR. CAMPBELL-HARRIS: Okay. 12 (Break taken.) 13 Q. (By Mr. Campbell-Harris) We're 14 going to go back and put up what I 15 believe I've marked as Exhibit 3 and 16 scroll to page 9, starting with "Dear 17 Mack." 18 Okay. Do you recognize this 19 e-mail, Mr. Brown? 20 A. Yes. 21 Q. Okay. And this e-mail on page 22 9, it's addressed to Mack Butler. Is 23 that correct?</p> | <p style="text-align: right;">Page 129</p> <p>1 Q. There are communications? 2 A. Oh, no, no. I guess I didn't 3 understand the question. 4 Q. Sorry. I can repeat it. 5 A. Yes. 6 Q. Are there communications between 7 you and former Senator Scofield about the 8 subpoena you received in early April 2024 9 that predate this April 6 e-mail? 10 A. No. Thank you for letting me 11 clarify. I misunderstood the question. 12 Q. No problem. Thank you. 13 Did -- okay. In the fourth 14 paragraph on page 25, you again suggest 15 that the materials -- there are materials 16 that might be responsive to the subpoena 17 but subject to former Senator Scofield's 18 privilege. Is that correct? And we can 19 scroll down a bit so you can see the full 20 paragraph. 21 A. It appears to be correct, yes. 22 Q. Okay. And did you, with 23 counsel, go through the potentially</p> |

33 (Pages 126 - 129)

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| <p style="text-align: right;">Page 130</p> <p>1 privileged materials to create the 2 itemized record, index record? 3 A. Yes. 4 Q. Okay. 5 MR. WELLER: You know, Dayton, I 6 don't mean to try and shortcut you here, 7 but why don't you just ask him if he's 8 done that for all the nine 9 nonlegislators, kind of cut to the -- 10 it's up to you, I mean, but if you're 11 going to go through every one of them, it 12 might take a while. 13 MR. CAMPBELL-HARRIS: Yeah. 14 Q. Is there -- besides going 15 through counsel to review the items in 16 the itemized index, did you take any 17 other action to determine whether or not 18 the documents that are potentially 19 privileged could be privileged or not? 20 A. I don't understand the question. 21 Q. You worked with counsel to 22 determine what documents could be subject 23 to legislative privilege for each of</p> | <p style="text-align: right;">Page 132</p> <p>1 Q. Okay. And did you and former 2 Senator Scofield have communications 3 about the litigation over the 2023 plan 4 after it passed on July 21st, 2023? 5 A. Possibly, but I don't recall. 6 Q. Okay. Is it possible that you 7 communicated with each of the nonparty 8 legislators who filed the motion to quash 9 about HB1 passed in 2021 and the 10 litigation over HB1? 11 A. Can you repeat the question? 12 Q. I can. Is it possible that -- 13 well, scratch that. 14 Did you communicate with each of 15 the nonparty legislators who signed on to 16 the motion to quash the subpoena you 17 received, did you communicate with them 18 about the litigation over HB1 passed in 19 2021? 20 A. It's possible, but I don't 21 recall. 22 Q. Okay. It's possible for each 23 one of those nonparty legislators?</p> |
| <p style="text-align: right;">Page 131</p> <p>1 these nine legislators; correct? 2 A. Yes. 3 Q. Did you take any other action 4 besides working with counsel to determine 5 whether or not those documents are 6 potentially privileged? 7 A. No. I don't believe so, if I 8 understand your question correctly. 9 Q. Okay. Do you know how any of 10 the nine legislators who signed on to the 11 legislative -- this motion to quash 12 determined whether or not communications 13 you sent them in those index of records, 14 do you know how any of those nonparty 15 legislators determined whether those 16 materials were privileged or not? 17 A. I cannot speak to how any of 18 them determined that, no. 19 Q. Okay. Did you and former 20 Senator Scofield have communications 21 about the litigation over HB1 in 2021 22 after it passed in 2021? 23 A. I don't recall.</p> | <p style="text-align: right;">Page 133</p> <p>1 A. It's possible, but again, I 2 don't recall. 3 Q. Okay. And did you speak with -- 4 or scratch that. 5 Did you communicate or have 6 communications with any of the nonparty 7 legislators about the litigation over the 8 2023 plan after it passed on July 21st, 9 2023? 10 A. It's possible, but I don't 11 recall specifics. 12 Q. Okay. It's possible for each of 13 those nonparty legislators? 14 A. Unlikely for some, more likely 15 for others. 16 Q. Okay. Do you know which 17 nonparty legislators it is unlikely that 18 you communicated with them about the 19 litigation over the 2023 plan? 20 A. I would say it would -- unlikely 21 that it would be Mooney or Rehm or Butler 22 or Yarbrough or Kiel, unlikely. 23 Q. Okay. Did you have</p> |

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| <p style="text-align: right;">Page 134</p> <p>1 communications with Representative Chris 2 Pringle about HB1 in 2021? 3 A. No. 4 Q. Okay. Did you have 5 communications about the litigation over 6 HB1 with Chris Pringle that passed in 7 2021? 8 A. No. 9 Q. Did you have communications with 10 Chris Pringle about redistricting in 11 Alabama at all in 2023? 12 A. No. 13 Q. Okay. Have you ever retained 14 Chris Pringle as a client of yours? 15 A. No. 16 Q. Okay. For each of the nonparty 17 legislators who signed on to the motion 18 to quash, did you communicate with any of 19 them about congressional redistricting in 20 Alabama prior to June 8th, 2023? 21 A. I don't recall. 22 Q. Okay. Is it possible? 23 A. It's possible. I talk with my</p> | <p style="text-align: right;">Page 136</p> <p>1 Privilege Log - Emails"? 2 A. It appears so. I don't have 3 knowledge of that. 4 Q. Okay. Do you know what those 5 documents are? 6 A. I have an idea, yeah. 7 Q. What are those documents? 8 A. They would have been 9 correspondence with me and Mr. 10 Domnanovich in an effort to determine 11 performance numbers of congressional 12 maps. 13 Q. Okay. Who is Joe Domnanovich? 14 A. He's a personal friend of mine. 15 Q. Okay. Is he a business partner 16 of RedState? 17 A. No. 18 Q. Okay. Does he perform work for 19 RedState? 20 A. Not compensated. 21 Q. Okay. Does he perform work for 22 RedState clients on your behalf? 23 A. I mean, I guess the answer is</p> |
| <p style="text-align: right;">Page 135</p> <p>1 clients on a wide variety of topics, and 2 often they bring them up. And I can't 3 recall every conversation I've had. 4 Q. Fair enough. Let's go to page 5 21 of Exhibit 3 and specifically to the 6 paragraph that says -- that mentions the 7 itemized and descriptive index of 8 records. 9 A. It hasn't moved. Who is this 10 one referring to? 11 Q. Yeah. 12 MR. CAMPBELL-HARRIS: And let's 13 scroll down a little bit. Keep scrolling 14 down. Keep scrolling. Maybe it's on 22. 15 Yeah. 16 Q. Do you see the paragraph that 17 says, "Also attached is a log of these 18 items," and then it continues? 19 A. Yes. 20 Q. Okay. Did you, through counsel, 21 send Representative Yarbrough two 22 documents titled "Domnanovich - Privilege 23 Log - Text Messages" and "Domnanovich -</p> | <p style="text-align: right;">Page 137</p> <p>1 possibly yes because I asked him to do 2 something for me on behalf of clients, 3 but it's not a typical relationship, if 4 that's what you're asking. 5 Q. Okay. Is he an attorney? 6 A. Not to my knowledge. 7 Q. Okay. Is he an attorney of any 8 of the nonparty legislators? 9 A. I don't believe -- I don't 10 believe he's an attorney. 11 Q. Okay. Do you recall when you 12 started communicating with Mr. 13 Domnanovich about Alabama redistricting 14 in 2023? 15 A. Not specifically, no. 16 Q. Okay. Do you recall whether you 17 initiated conversations with Mr. 18 Domnanovich about Alabama redistricting 19 in 2023 or whether he initiated 20 conversations with you about Alabama 21 redistricting in 2023? 22 A. I would have initiated 23 conversations with him.</p> |

35 (Pages 134 - 137)

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| <p style="text-align: right;">Page 138</p> <p>1 Q. Okay. And why is that?</p> <p>2 A. Mr. Domnanovich is a friend and</p> <p>3 a data guy, and he often gives me insight</p> <p>4 in all aspects of my party and</p> <p>5 professional life on information.</p> <p>6 Q. Okay. Would you describe Mr.</p> <p>7 Domnanovich as a data analyst?</p> <p>8 A. Amateur, yes.</p> <p>9 Q. Okay. Did you involve</p> <p>10 Domnanovich in assessing the performance</p> <p>11 of congressional maps in 2023?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Why would you say amateur</p> <p>14 data analyst?</p> <p>15 A. Well, I don't think it's his</p> <p>16 profession.</p> <p>17 Q. Do you know what training Mr.</p> <p>18 Domnanovich has on data analytics?</p> <p>19 A. I do not.</p> <p>20 Q. Okay. Do you know what Mr.</p> <p>21 Domnanovich's involvement was with the</p> <p>22 2023 plan?</p> <p>23 A. I don't believe he had any.</p> | <p style="text-align: right;">Page 140</p> <p>1 A. Yes.</p> <p>2 Q. Okay. But you do not recall</p> <p>3 which specific maps. Is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. Did you and Mr.</p> <p>6 Domnanovich have communications about the</p> <p>7 2023 plan after it was enacted on July</p> <p>8 21st, 2023?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. Okay. Did you and Mr.</p> <p>11 Domnanovich have communications about HB1</p> <p>12 after it was enacted in 2021?</p> <p>13 A. I don't recall that, no.</p> <p>14 Q. Okay. Do you know what Mr.</p> <p>15 Domnanovich does for a living?</p> <p>16 A. I do not.</p> <p>17 Q. Okay. How long have you known</p> <p>18 Mr. Domnanovich?</p> <p>19 A. Probably 20 years.</p> <p>20 Q. Okay. How did your relationship</p> <p>21 with Mr. Domnanovich begin?</p> <p>22 A. I met him through Republican</p> <p>23 Party activities.</p> |
| <p style="text-align: right;">Page 139</p> <p>1 Q. Okay. Do you know whether Mr.</p> <p>2 Domnanovich communicated with anyone</p> <p>3 about the 2023 plan -- maps with anyone</p> <p>4 who was not a legislator?</p> <p>5 A. Only me.</p> <p>6 Q. Do you know whether Mr.</p> <p>7 Domnanovich communicated with any</p> <p>8 legislative staff about any 2023 plans?</p> <p>9 A. I don't have knowledge of that,</p> <p>10 no.</p> <p>11 Q. Okay. And just to confirm, Mr.</p> <p>12 Domnanovich is not an employee of</p> <p>13 RedState?</p> <p>14 A. He's not -- he's not an</p> <p>15 employee, no.</p> <p>16 Q. Okay. Do you recall what maps</p> <p>17 Mr. Domnanovich performed any data</p> <p>18 analytics on in 2023?</p> <p>19 A. I do not.</p> <p>20 Q. Okay. But you recall that he</p> <p>21 did run numbers or perform data analytics</p> <p>22 work on maps during the 2023 Alabama</p> <p>23 special session?</p> | <p style="text-align: right;">Page 141</p> <p>1 Q. Okay. Is it your understanding</p> <p>2 that Mr. Domnanovich is also a member of</p> <p>3 the Alabama Republican Party?</p> <p>4 A. He is.</p> <p>5 Q. Okay. And is Mr. Domnanovich</p> <p>6 also a member of the Jefferson County</p> <p>7 Republican Party?</p> <p>8 A. He is.</p> <p>9 Q. Okay. Do you know whether or</p> <p>10 not -- scratch that.</p> <p>11 Well, no. Do you know whether</p> <p>12 or not Mr. Domnanovich shared any maps</p> <p>13 with anyone else who was not a</p> <p>14 legislator?</p> <p>15 A. I don't know that, but I don't</p> <p>16 believe that he did.</p> <p>17 Q. Okay. Okay. Mr. Domnanovich</p> <p>18 doesn't work in the Alabama State</p> <p>19 Legislature?</p> <p>20 A. No.</p> <p>21 Q. Okay. Do you have a</p> <p>22 relationship with I think former Senator</p> <p>23 Jim McClendon?</p> |

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| <p style="text-align: right;">Page 142</p> <p>1 A. No.</p> <p>2 Q. Okay. Did you ever have a</p> <p>3 business relationship with former Senator</p> <p>4 Jim McClendon?</p> <p>5 A. No.</p> <p>6 Q. Do you know Edmund LaCour?</p> <p>7 A. I know who he is, yes.</p> <p>8 Q. Do you have a relationship with</p> <p>9 Eddie LaCour at all?</p> <p>10 A. No, I do not.</p> <p>11 Q. Okay. How do you know Eddie</p> <p>12 LaCour?</p> <p>13 A. I know his name and I know where</p> <p>14 he works. I can't tell you what he looks</p> <p>15 like.</p> <p>16 Q. Okay. Fair enough.</p> <p>17 Is there anything else that you</p> <p>18 intend to testify about at the June 20th</p> <p>19 hearing that we have not already</p> <p>20 discussed?</p> <p>21 A. Can I check with my counsel</p> <p>22 before I answer that question? I don't</p> <p>23 know. I don't think there is unless</p> | <p style="text-align: right;">Page 144</p> <p>1 handful of them from Roberts, Barfoot,</p> <p>2 and Kiel.</p> <p>3 MR. CAMPBELL-HARRIS: I know --</p> <p>4 MR. JORDAN: If you don't, I'll</p> <p>5 send the rest, you know, right away.</p> <p>6 MR. CAMPBELL-HARRIS: Yeah. Why</p> <p>7 don't we do this --</p> <p>8 MR. JORDAN: I think you have</p> <p>9 all the correspondence from early on in</p> <p>10 April that was attached to Mr. Weller's</p> <p>11 objection that indicates there's a log</p> <p>12 with respect to, you know, each of these</p> <p>13 clients. And if you didn't get it</p> <p>14 yesterday, it was an utter accident, and</p> <p>15 I can get it to you, you know,</p> <p>16 momentarily if need be. You haven't</p> <p>17 asked any questions about particular logs</p> <p>18 today, but I want to make sure you know</p> <p>19 that we meant to provide them. And I</p> <p>20 guess we -- and I can do it, you know,</p> <p>21 right away. But all I can say is I'm not</p> <p>22 as skilled with those attachments as I</p> <p>23 should be. And I don't quite understand</p> |
| <p style="text-align: right;">Page 143</p> <p>1 he's -- unless he tells me there is.</p> <p>2 MR. JORDAN: Well, you know,</p> <p>3 Dayton, he wouldn't be making those</p> <p>4 judgments about the hearing. And you</p> <p>5 seem to be pretty comprehensive in your</p> <p>6 knowledge about it.</p> <p>7 I will say that it appears to me</p> <p>8 that I attempted to send you guys</p> <p>9 privilege logs, I think it was yesterday,</p> <p>10 for each of the nine people that he has</p> <p>11 as clients that I believe you have</p> <p>12 letters for. And just in reviewing my</p> <p>13 e-mails to Kathryn yesterday, I'm not</p> <p>14 positive you have all nine. And if you</p> <p>15 -- and part of that's just a reflection</p> <p>16 of my deficits with e-mail and</p> <p>17 attachments. And if you guys could check</p> <p>18 to see if you have all the logs, I would</p> <p>19 be grateful. I meant to send all the</p> <p>20 logs. I know --</p> <p>21 MR. WELLER: And --</p> <p>22 MR. JORDAN: Yeah. I have some</p> <p>23 concern that you may have only gotten a</p> | <p style="text-align: right;">Page 145</p> <p>1 why it may be that only three went</p> <p>2 instead of all nine.</p> <p>3 MR. WELLER: Let me make a</p> <p>4 statement for the record about the logs.</p> <p>5 Just for the record, I don't feel that</p> <p>6 the legislators have an obligation under</p> <p>7 the current case law in the Eleventh</p> <p>8 Circuit to provide a log of the</p> <p>9 privileged documents. But if the Court</p> <p>10 requires that we submit those logs for</p> <p>11 its review, then certainly we will do</p> <p>12 that. But I don't think it's incumbent</p> <p>13 on us, especially after Chief Judge</p> <p>14 Pryor's decision in the Pernell case that</p> <p>15 a log is required of us for any of the</p> <p>16 communications.</p> <p>17 MR. JORDAN: And I don't mean to</p> <p>18 disagree with Mr. Weller about that,</p> <p>19 Dayton. All I'm saying is I'm just</p> <p>20 trying to avoid confusion or</p> <p>21 misunderstanding about the subjects of</p> <p>22 the hearing, potentially, and to make</p> <p>23 sure that we've been forthcoming as we</p> |

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| <p style="text-align: right;">Page 146</p> <p>1 reasonably can be.</p> <p>2 MR. CAMPBELL-HARRIS: I</p> <p>3 appreciate that.</p> <p>4 MR. JORDAN: Subject to the</p> <p>5 privileges.</p> <p>6 MR. CAMPBELL-HARRIS: Of course.</p> <p>7 We have logs from it looks like Rehm,</p> <p>8 Roberts, Scofield, Mooney, Yarbrough,</p> <p>9 Domnanovich, Barfoot, Carns, Butler, and</p> <p>10 I think that is it.</p> <p>11 MR. JORDAN: Is there a Kiel?</p> <p>12 MR. WELLER: You should have</p> <p>13 Kiel.</p> <p>14 MR. CAMPBELL-HARRIS: Let's see.</p> <p>15 Yes. We have Kiel as well.</p> <p>16 MR. JORDAN: Good. I think that</p> <p>17 there are -- one of the virtues of the</p> <p>18 logs is it gives you a -- if you got a</p> <p>19 complete set, is that it gives you a</p> <p>20 complete list of his clients that he</p> <p>21 might not have been able to recite all</p> <p>22 the names when you first asked, but</p> <p>23 that's one of the virtues of the logs.</p> | <p style="text-align: right;">Page 148</p> <p>1 that are expected to ask questions? I</p> <p>2 know we have a lot of people</p> <p>3 participating and other parties.</p> <p>4 MR. TAUNTON: We won't have</p> <p>5 questions, I don't think.</p> <p>6 MR. DAVIS: We won't.</p> <p>7 MS. RUTAHINDURWA: No questions</p> <p>8 for Caster plaintiffs either.</p> <p>9 (Break taken.)</p> <p>10 Q. (By Mr. Campbell-Harris) Okay.</p> <p>11 Mr. Brown, thank you so much again for</p> <p>12 being here. I just have a few more</p> <p>13 follow-up questions.</p> <p>14 First, I just want to confirm</p> <p>15 that Mr. Domnanovich, did -- he never</p> <p>16 participated in any communications</p> <p>17 involving legislators. Is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. And then, what did you</p> <p>20 and your attorney discuss over the break</p> <p>21 from 1:00, or noon your time to about</p> <p>22 12:15?</p> <p>23 MR. JORDAN: Well, wait a</p> |
| <p style="text-align: right;">Page 147</p> <p>1 MR. CAMPBELL-HARRIS: Yeah. And</p> <p>2 I purposely didn't bring them up as well</p> <p>3 to avoid --</p> <p>4 MR. JORDAN: So it sounds like</p> <p>5 you probably do have them all, but I'll</p> <p>6 double-check. Just I asked them to be</p> <p>7 printed for me in preparation for this,</p> <p>8 and I didn't get but a partial set, and</p> <p>9 that's why I was wanting to clarify for</p> <p>10 you.</p> <p>11 MR. CAMPBELL-HARRIS: I</p> <p>12 appreciate that, Mr. Jordan. I think</p> <p>13 we're going to take maybe five minutes to</p> <p>14 regroup internally with my colleagues and</p> <p>15 then maybe we can go back on the record.</p> <p>16 Mr. Weller and Mr. Jordan, do</p> <p>17 you expect to have like follow-up</p> <p>18 questions?</p> <p>19 MR. WELLER: If I do, it'll be</p> <p>20 very few. I'm going to confer.</p> <p>21 MR. CAMPBELL-HARRIS: Okay.</p> <p>22 MR. JORDAN: Yeah. We want to</p> <p>23 talk. What about -- are there others</p> | <p style="text-align: right;">Page 149</p> <p>1 minute. You mean what I want to present</p> <p>2 or what advice I gave him? That would</p> <p>3 be -- wouldn't that be attorney-client</p> <p>4 privilege? We would object.</p> <p>5 MR. CAMPBELL-HARRIS: Not during</p> <p>6 the deposition because he's under oath</p> <p>7 right now, and so anything you talk about</p> <p>8 with a client is open to my probing. And</p> <p>9 if you want to instruct him not to</p> <p>10 answer, you can do so, but it is -- I can</p> <p>11 ask about that during the deposition.</p> <p>12 MR. JORDAN: Yeah. I would</p> <p>13 object to that and instruct him not to</p> <p>14 answer.</p> <p>15 MR. CAMPBELL-HARRIS: Okay.</p> <p>16 Q. Are you going to follow your</p> <p>17 attorney's advice, Mr. Brown?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Did you have discussions</p> <p>20 with your attorney over our last break?</p> <p>21 A. Not really.</p> <p>22 Q. Okay. You did not talk to your</p> <p>23 attorney over the last break we had?</p> |

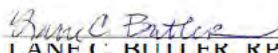
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| <p style="text-align: right;">Page 150</p> <p>1 A. I mean, we spoke, but it wasn't 2 substantive, I guess. 3 Q. Okay. Okay. Those are all the 4 questions that I -- 5 MR. JORDAN: Let me follow up 6 with your question on the -- it's almost 7 the nature of voir dire. 8 During the break, did you follow 9 me around my office as I attempted to 10 gather these exhibits? 11 THE WITNESS: Yes. 12 MR. JORDAN: Thank you. 13 MR. CAMPBELL-HARRIS: Okay. 14 Those are all the questions I have, Mr. 15 Brown. We're going to leave the 16 deposition open based on the hearing, but 17 those are all the questions I have at 18 this time, so I pass the witness. And 19 thank you so much again for taking the 20 time to be here today to answer our 21 questions. I appreciate it. 22 MR. JORDAN: Okay. Whose turn 23 is it next?</p> | <p style="text-align: right;">Page 152</p> <p>1 MR. WELLER: Let me just raise 2 my brief objection. It's not an 3 objection, of course, to the stipulation 4 of authenticity. I just want to preserve 5 our right to argue to the Court that the 6 requirement that we produce privilege 7 logs is -- it's not a requirement. 8 That's all I have on that. 9 MR. JORDAN: And I can -- well, 10 I realize that's a general stipulation 11 descriptive, and I think we understand 12 what it is. But I believe you indicated 13 that I had delivered them to Kathryn 14 yesterday. And I can itemize them more 15 clearly if you wish at this point by 16 name. 17 MR. CAMPBELL-HARRIS: Okay. We 18 can stipulate to the fact that, Mr. 19 Jordan, you sent us privilege logs. We'd 20 like to see like an exhibit list for the 21 hearing, so that way we can determine 22 whether or not we're going to have 23 objections or not. But we do stipulate</p> |
| <p style="text-align: right;">Page 151</p> <p>1 MR. CAMPBELL-HARRIS: It's all 2 yours, Mr. Jordan. 3 MR. JORDAN: Are there any 4 parties to the case that have questions? 5 Other parties? 6 MR. WELLER: I don't have any 7 questions unless I need to follow up on 8 something you may ask. 9 MR. JORDAN: I wanted to put on 10 the record, Mr. Campbell-Harris, our wish 11 to stipulate to the authenticity of the 12 privilege logs that itemized 13 communications between RedState and its 14 client legislators that are responsive to 15 requests in the subpoena. And there are 16 nine different legislators. And for 17 some, there's more than one log. And I 18 believe you have the set of 19 communications with all of them. And if 20 not, we can put them in the record right 21 now. But I would like you to stipulate 22 that those are authentic at least for 23 purposes of this hearing on Thursday.</p> | <p style="text-align: right;">Page 153</p> <p>1 to the fact that yes, you did send us 2 privilege logs. 3 MR. JORDAN: With respect to 4 each of the legislators that -- for whom 5 we claim legislative privilege. 6 MR. CAMPBELL-HARRIS: Just to 7 the fact that you sent us privilege logs 8 of communications withheld. 9 MR. JORDAN: Communications 10 between Mr. Brown and the legislator; 11 right? 12 MR. CAMPBELL-HARRIS: Well, we 13 want to see -- just withheld 14 communications, we stipulate that -- 15 MR. JORDAN: Yes, they are. 16 That's right. These are communications 17 that were withheld, but we just created a 18 log of them, an itemization of them 19 describing the date that they were sent, 20 the request that they purported to be 21 responsive to, and the nature of the 22 privilege. And we did that with respect 23 to each legislator and communications.</p> |

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| <p style="text-align: right;">Page 154</p> <p>1 And some include communications between 2 Mr. Brown and more than one legislator. 3 Some of them are called -- for instance, 4 there's one log that's group messages 5 that includes Dan Roberts and Will 6 Barfoot. 7 MR. CAMPBELL-HARRIS: You sent 8 us the logs yesterday, and we haven't had 9 a chance to review -- 10 MR. JORDAN: Fair enough. 11 MR. CAMPBELL-HARRIS: -- all the 12 logs yet. So we'd like to have a chance 13 to review them. We haven't had a 14 chance -- yeah, we'd like to review them, 15 and then maybe we can come to an 16 agreement. But at this time, we can only 17 stipulate to the fact -- 18 MR. JORDAN: Fair enough. Fair 19 enough. 20 MR. CAMPBELL-HARRIS: Okay. 21 MR. JORDAN: So I would like to 22 ask the court to mark a document as RSS 23 Exhibit 1, a document with nine pages.</p> | <p style="text-align: right;">Page 156</p> <p>1 came to you after you finished your work 2 at Southern Insights. Is that correct? 3 A. The vast majority of them were 4 RedState Strategies' solo clients. 5 Q. Okay. And then you have some 6 clients on there who are persons who were 7 seeking election to statewide office. Is 8 that correct? 9 A. Yes. 10 Q. And those include -- are those 11 mostly judges or others? 12 A. I mean, in recent history, yes, 13 statewide judge/judicial candidates, yes. 14 Q. Okay. And is this thing that 15 I've marked as RSS-1 a true and correct 16 copy of your -- the website for RedState 17 Strategies as it exists today? 18 A. I believe so, yes. 19 Q. All right. 20 MR. JORDAN: We'll offer Exhibit 21 1 for -- RSS-1 to the record. 22 Those are my questions. 23 MR. WELLER: I have no</p> |
| <p style="text-align: right;">Page 155</p> <p>1 2 EXAMINATION BY MR. JORDAN: 3 Q. I'm going to show it to Mr. 4 Brown and ask him if he can tell us what 5 that is. 6 (Exhibit RSS-1 was marked for 7 identification and is attached.) 8 A. Yeah. These are printed copies 9 of my company website. 10 Q. That's a RedState Strategies? 11 A. Redstate-strategies.com. 12 Q. And this website -- this 13 document I showed you has a date at the 14 bottom, today, does it not? 15 A. Yes. 16 Q. Okay. And you've got a list of 17 your current and/or former clients on 18 here; right? 19 A. I do have a tab on my website 20 that lists my current and former clients, 21 yes. 22 Q. Okay. And that includes some 23 clients that were personal to you and</p> | <p style="text-align: right;">Page 157</p> <p>1 questions. 2 MR. TAUNTON: I don't have any 3 questions, but I was going to raise just 4 one thing before we end. 5 Dayton, you said that your plan 6 was to leave the deposition open pending 7 the hearing this coming Thursday. I'm 8 just going to note that could have the 9 unintended consequence of Mr. Jordan 10 being able to communicate properly with 11 his client the next couple of days and 12 just wondered if maybe it's better to 13 close this deposition and open a new one, 14 depending on -- 15 THE COURT REPORTER: I think 16 we're having a little trouble hearing 17 you, Michael, if you could speak up, 18 please. 19 MR. TAUNTON: Okay. Sorry. Can 20 you hear me now? 21 MR. JORDAN: Yeah. Better, a 22 lot better. 23 MR. TAUNTON: I said I note that</p> |

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| <p style="text-align: right;">Page 158</p> <p>1 you had said your plan was to leave open 2 this deposition pending the hearing on 3 Thursday. I'm worried that could have 4 some -- it's not really mine to look at, 5 I guess, but that could have some 6 unintended consequence on Mr. Jordan's 7 ability to communicate properly with his 8 client between now and Thursday, and I 9 wonder if maybe the better procedure 10 would be to close this deposition and 11 then open a second deposition if need be. 12 Just a thought.</p> <p>13 MR. CAMPBELL-HARRIS: If, Mr. 14 Jordan, you and your client are willing 15 to stipulate to the fact that we would be 16 entitled to a new deposition if the Court 17 rules in our favor on the privilege 18 issue, then we can agree to close the 19 deposition today. But you let me know 20 how that sounds to you all.</p> <p>21 MR. JORDAN: Well, we would 22 stipulate that we don't think the fact 23 that you took his deposition today</p> | <p style="text-align: right;">Page 160</p> <p>1 should the Court rule in our favor, then 2 we can open a new deposition if the Court 3 allows us to have that discovery 4 opportunity.</p> <p>5 MR. JORDAN: Good. That's okay. 6 MR. CAMPBELL-HARRIS: Okay. 7 MR. TAUNTON: Yeah. I just saw 8 that issue come up in another case 9 recently and didn't want to run into it 10 again here. That's all.</p> <p>11 MR. JORDAN: Thanks for bringing 12 it up.</p> <p>13 14 END OF DEPOSITION 15 (12:34 p.m. Central)</p> <p>16 17 CHRISTOPHER BROWN</p> <p>18 19 Subscribed and sworn to before me 20 this ____ day of _____, 2024.</p> <p>21 22 23 NOTARY PUBLIC</p> |
| <p style="text-align: right;">Page 159</p> <p>1 precludes you from taking his deposition 2 later if the Court wants you to take it 3 or wants to allow you to. That's 4 somewhat different from saying it's open. 5 But I don't want the fact that we 6 attempted to be efficient and allow you 7 to take his deposition today to itself 8 preclude you from doing it if the Court 9 thinks it's proper to have additional 10 deposition testimony from Mr. Brown, that 11 fact preventing you from doing so. I 12 don't want to be precluded from 13 consulting with my client in preparation 14 for the hearing on Thursday for testimony 15 if need be.</p> <p>16 MR. CAMPBELL-HARRIS: That makes 17 sense.</p> <p>18 MR. JORDAN: Okay.</p> <p>19 MR. CAMPBELL-HARRIS: I mean, I 20 think we're on the same page. Yeah.</p> <p>21 MR. JORDAN: Okay.</p> <p>22 MR. CAMPBELL-HARRIS: So we can 23 close the deposition on the basis that</p> | <p style="text-align: right;">Page 161</p> <p>1 C E R T I F I C A T E 2 STATE OF ALABAMA) 3 COUNTY OF JEFFERSON) 4 I hereby certify that the above 5 and foregoing proceeding was taken down 6 by me by stenographic means, and that the 7 content herein was produced in transcript 8 form by computer aid under my 9 supervision, and that the foregoing 10 represents, to the best of my ability, a 11 true and correct transcript of the 12 proceedings occurring on said date at 13 said time.</p> <p>14 I further certify that I am 15 neither of counsel nor of kin to the 16 parties to the action; nor am I in 17 anyway interested in the result of said 18 case.</p> <p>19 20  21 LANE C. BUTLER, KPK, CRR, CCR 22 CCR# 418 -- Expires 9/30/24 23 Commissioner, State of Alabama My Commission Expires: 2/11/25</p> |

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| 1 | ERRATA SHEET | | | |
| 2 | VERITEXT/NEW YORK REPORTING, LLC | | | |
| 3 | CASE NAME: Milligan, Evan, Et Al. v. Wes Allen, Et Al. | | | |
| 4 | DATE OF DEPOSITION: 6/18/2024 | | | |
| 5 | WITNESSES' NAME: Christopher R. Brown | | | |
| 6 | PAGE | LINE (S) | CHANGE | REASON |
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| 22 | <div style="text-align: center;"> <div>_____</div> <div>Christopher R. Brown</div> </div> | | | |
| 23 | SUBSCRIBED AND SWORN TO BEFORE ME | | | |
| 24 | THIS ____ DAY OF _____, 20__. | | | |
| 25 | _____ (NOTARY PUBLIC) | | _____ MY COMMISSION EXPIRES: | |

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

UNITED STATES DISTRICT COURT

for the

Northern District of Alabama



EVAN MILLIGAN, et al.,

Plaintiff

WES ALLEN, et al.,

Defendant

Civil Action No. 2:21-cv1530-AMM

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Red State Strategies, LLC
c/o Registered Agent Christopher R. Brown P.O. Box 43564 Birmingham, AL 35243

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A.

Place: See Attachment A

Date and Time:
04/19/2024

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 04/03/2024

CLERK OF COURT

OR

/s/Nicki Lawsen

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiffs

, who issues or requests this subpoena, are:

Nicki Lawsen, Esq., 301 19th Street North, Birmingham, AL 35203, nlawsen@wigginschilds.com, 205-314-0500

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

EXHIBIT

1

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 2:21-cv1530-AMM

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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

EVAN MILLIGAN, et al.,
Plaintiffs,

v.

WES ALLEN, et al.,
Defendants.

No. 2:21-cv-01530-AMM

MARCUS CASTER, et al.,
Plaintiffs,

v.

WES ALLEN, et al.,
Defendants.

No. 2:21-cv-01536-AMM

GENERAL INSTRUCTIONS

1. These requests require You to produce all documents that are in Your actual or constructive possession, custody, or control or in the possession, custody, or control of your attorneys, accountants, representatives, consultants, agents, or employees.

2. In construing these Requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside that scope. Words used in the masculine gender include the feminine, and words used in the singular include the plural. The past tense shall be construed to include the present and future tenses and vice versa. The terms “each,” “every,” “all,” and “any” whether used separately or together, shall be interpreted to encompass all material, events, incidents, persons, or information responsive to the request in which those terms appear.

3. If any document that would be responsive to the requests below is not produced because of a claim of privilege or immunity, You shall serve upon the undersigned counsel a written list that identifies each such document and states the ground on which each such document is asserted to be privileged or immune from disclosure. Any attachment to an allegedly privileged or immune document shall be produced unless you contend that the attachment is also privileged or immune from disclosure.

4. Unless otherwise stated, information supplied in response to these requests for production of documents should be fully inclusive for the period from June 8, 2023 to the present unless otherwise notes.

5. You may produce legible, complete, and exact copies of the original documents, provided that the originals be made available for inspection upon request by the undersigned counsel. Any and all responsive documents or data stored in electronic format shall be produced in their original unaltered format unless otherwise agreed to by the parties.

6. Pursuant to Rule 45 (e)(1)(A) of the Federal rules, the documents produced must be produced as they are kept in the usual course of business or organized and labeled to correspond to the categories in this set of document requests. whether used separately or together, shall be interpreted to encompass all material, events, incidents, persons, or information responsive to the request in which those terms appear.

7. If there is any question as to the meaning of any part of these requests, or an issue as to whether production of responsive documents would impose an undue burden on You, the undersigned counsel for plaintiffs should be contacted promptly.

DEFINITIONS

1. “You” or “Your” means Chris Brown and the Red State Strategies, including, but not limited to any and all of Red State Strategies’ employees, representatives, agents, consultants, or other individuals that are acting on your behalf.

2. “Document” has the same meaning and scope as used in Federal Rule of Civil Procedure 34 and the phrase “writings and recordings” as defined in Federal Rule of Evidence 1001, and includes, but is not limited to, any computer discs, tapes, printouts, emails, and databases, and any handwritten, typewritten, printed, electronically-recorded, electronically stored information, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

3. The term “electronically stored information” means electronic information that is stored in a medium from which it can be retrieved and examined. It includes, but is not limited to, all electronic files that can be retrieved from electronic storage.

4. “Electronic file” includes, but is not limited to, the following: electronic documents; e-mail messages and files; deleted files; temporary files; and metadata.

5. “Electronic information system” refers to a computer system or network that contains electronic files and electronic storage.

6. “Electronic storage” refers to electronic files contained on magnetic, optical, or other storage media, such as hard drives, flash drives, DVDs, CDs, tapes, cartridges, floppy diskettes, smart flash drives, DVDs, CDs, tapes, cartridges, floppy diskettes, smart cards, integrated-circuit cards (e.g., SIM cards).

7. “Person(s)” shall refer not only to natural persons, but also without limitation to firms, partnerships, corporations, associations, unincorporated associations, organizations, businesses, trusts, government entities, and/or any other type of legal entities.

8. The term “relating” or “relate” or “related” means concerning, referring, regarding, describing, evidencing, including or constituting, either directly or indirectly.

9. The term “show” or “showing” means displaying, identifying, evidencing, proving, either directly or indirectly.

10. The terms “communication” and “communicated” mean the transmittal of information in the form of facts, ideas, inquiries, or otherwise, whether such information is transmitted orally or in writing or by any other method.

11. “Defendants” means Wes Allen, in his official capacity as Alabama Secretary of State, Steve Livingston and Chris Pringle, in their official capacities as Co-Chairs of the Alabama Permanent Legislative Committee on Reapportionment, and present agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on behalf of Defendants or subject to Defendants’ control.

12. The term “location(s)” means any and all physical and virtual locations associated with an event, including but not limited to physical sites, electronic sites, addresses, and websites. If asked to identify a location, you should provide the address or other locating information with as much specificity as is available.

13. The term “the 2023 Plan” shall refer to Alabama’s congressional map that was passed through both houses of the Legislature and signed into law by Governor Ivey on July 21, 2023.

REQUESTS FOR PRODUCTION

DOCUMENT REQUEST NO. 1: All communications between You and Defendants, including, but not limited to, correspondence, memoranda, electronically stored information, and documents, in your custody, possession, or control, that relate to any of Your or Defendants' efforts to research, analyze, promote, publicize, or support the enactment of the 2023 Plan or any alternative or predecessor plan developed in June or July of 2023.

DOCUMENT REQUEST NO. 2: All documents or communications between You and Defendants, or other members of the Alabama Legislature, or any staff in the offices of the Secretary of State, the Governor of Alabama, or the Attorney General, or their predecessors in office, that relate to this litigation without limitation on time.

DOCUMENT REQUEST NO. 3: All documents or communications between You and Defendants, or other members of the Alabama Legislature, or any staff in the offices of the Secretary of State, the Governor of Alabama, or the Attorney General, or their predecessors in office, regarding the researching, creation, intent, purpose, planning, passage, or implementation of the 2023 Plan or any alternative or predecessor plan developed in June or July of 2023.

DOCUMENT REQUEST NO. 4: All documents that relate to any studies, analyses, briefings, research, or reports generated or undertaken by You on the subject of the 2023 Plan, or any alternative or predecessor plan developed in June or July of 2023.

DOCUMENT REQUEST NO. 5: All documents or communications relating to Your position in support or opposition to, or role in the debate, discussions, negotiations, drafting, or enactment of the 2023 Plan or any alternative or predecessor plan developed in June or July of 2023.

DATED this April 3, 2024.

/s/ Deuel Ross

Deuel Ross*

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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2024, I served the foregoing document on all counsel of record via electronic mail.

/s/ Nicki Lawsen

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Messages - Steve Livingston

iMessage
6/11/2023 11:42:56 AM

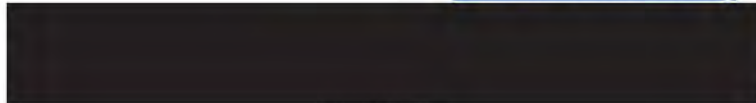
I've got 8 different maps. The performance #s are being run on all. Will let you know what I discover

Ty

6/12/2023 3:38:36 PM

<https://1819news.com/news/item/house-pro-tem-pringle-on-givans-racist-jay-z-lirade-some-days-her-medication-is-not-quite-working>

Another reason he needs to reign in



6/14/2023 3:54:31 PM

Coming through? I'm clear the rest of the day

Still monkey town

Dan and I are free anytime this evening

6/17/2023 8:48:01 AM

Can I call you later?

Of course

6/17/2023 4:57:06 PM

I have workable map with 4 split counties. Jefferson, st Clair, autauga and Clarke

K

Also think it mostly protects what Randy is wanting in CD 1

Be good to see

Tuesday



6/21/2023 3:01:45 PM

Can I call you later?

Call when free

Still in Montgomery?

Exported from CB Phone (F17G90150D8F) on 4/11/2024 3:23:15 PM with iMazing by DigiDNA. Database date when extracted: 4/10/2024 12:50:23 PM

Page 1 of 4

SL PRIV 000001

EXHIBIT

2

Messages - Steve Livingston

6/27/2023 8:22:29 PM



I've worked out a map with CD2 with this percent BVAP. Running the performance now

6/28/2023 9:04:12 AM

This map is workable. Not ideal for Moore. But winable

Thanks

If you want to see a map, let me know. Would 41.6 BVAP work?

7/20/2023 8:51:04 AM

I'm planning to spent today with [REDACTED] since I've been ignoring him for weeks. If YOU need me, please call. Otherwise, I will not be available until tonight



7/21/2023 2:35:32 PM

Thank you for being a strong leader. Very proud of you, sir

8/5/2023 10:17:15 AM

I know you are here somewhere like to at least say hello

Where are you

Back left side

9/12/2023 1:56:16 PM

<https://aldailynews.com/map-update-pringle-submits-communities-of-interest-plan-to-special-master/>

Not a team player

Yea I saw that

I read this article as an attack on you and the Senate

You think

Messages - Steve Livingston

9/13/2023 10:55:50 AM

I'm about to have the document in my hand. Dorman submitted the pringle plan to the case

Umh



6M - Submission of Proposed Remedial Plan (09-11).pdf

9/19/2023 5:38:13 PM



Members of Congress _23A231 Amicus Brief.pdf

Not sure if you have seen this by our congressional delegation. Very well thought out brief in support of the 2023 map

9/20/2023 8:28:43 AM

Thanks



_Singleton - Opposition to Application for Stay.pdf

9/22/2023 11:23:11 AM



Nat GOP Trust Amicus Brief.pdf

Another supporting amicus brief written by a former Thomas Clerk. Good stuff

Thanks

9/25/2023 5:39:55 PM

Last page...

"The Pringle Plan also followed the 2021 Plan, but nonetheless had a high overall core retention compared to the 2023 Plan. The Pringle Plan, however, did not remedy the likely Section Two violation"

I saw. :)

Messages - Steve Livingston

9/26/2023 2:43:24 PM



Really

Power grab

10/3/2023 2:06:38 PM

He can't let it go. Can he?

10/12/2023 6:18:20 AM

<https://www.cnn.com/2023/10/11/politics/supreme-court-south-carolina-nancy-mace-republicans-gerrymandering/index.html>

10/12/2023 9:38:48 AM

Thanks, interesting article

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

IN RE REDISTRICTING 2023

SPECIAL MASTER

No 2:20-mc-01181-AMM

NOTICE OF SUBMISSION OF PROPOSED REMEDIAL PLAN

Comes now defendant Rep. Chris Pringle, House Chair of the Alabama Legislature's Reapportionment Committee, and in accordance with the September 7, 2023 Amended Order, *e.g. Milligan* ECF 284, gives notice gives of the submission of a proposed remedial plan, the Community of Interest Plan. Attached are the block equivalency files for the Community of Interest Plan, a map of the plan, and a population summary for the plan. Following is an explanation of the plan.

Explanation of the Community of Interest Plan

The Community of Interest Plan was approved by the Reapportionment Committee and passed by the House of Representatives but not by the Senate. The Community of Interest Plan complies with the Reapportionment Committee's Guidelines, preserves important communities of interest identified by the Legislature, complies with the United States and Alabama constitutions and the Voting Rights Act, and has one majority-Black district

and one opportunity district in which Black voters have an equal opportunity to elect their candidate of choice. The Community of Interest Plan complies with the requirement for a remedial plan that includes “two districts in which Black voters either compromise a voting-age majority or something quite close to it.” *Milligan* ECF 107, p. 213.

Respectfully submitted this this 11th day of September, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that this the 11th day of September 2023 I electronically filed the foregoing notice with the clerk of the Court using the CM/ECF system, which will send notice to all counsel of record.

/s/Dorman Walker

No. 23A231

In The Supreme Court of the United States

WES ALLEN,
IN HIS OFFICIAL CAPACITY AS THE ALABAMA SECRETARY OF STATE,
Applicant,

v.

EVAN MILLIGAN, ET AL.,
Respondents.

**BRIEF OF *AMICI CURIAE*
MEMBERS OF THE ALABAMA CONGRESSIONAL DELEGATION
IN SUPPORT OF APPLICANT**

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September 19, 2023

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RULE 29.6 STATEMENT

Amici Curiae, Jerry Carl, Barry Moore, Mike Rogers, Robert Aderholt, Dale Strong, and Gary Palmer, do not constitute a corporation for purposes of Rule 29.6.

IDENTITY AND INTEREST OF *AMICUS CURIAE*¹

Jerry Carl, Barry Moore, Mike Rogers, Robert Aderholt, Dale Strong, and Gary Palmer, all Members of Congress representing districts in Alabama, submit this Amicus Brief in support of the Appellant. *Amici* have a vital interest in redistricting generally and this appeal specifically. As Members of the U.S. House of Representatives, the way congressional districts are drawn impacts *Amici*'s constituents, their campaigns, and the character of federal elections in Alabama. More importantly, *Amici* represent the very districts at issue, and any change to these districts will affect their ability to represent their constituencies. The district court's imposition of a preliminary injunction, and any subsequent decision from this Court, will have widespread implication for *Amici*.

¹ No counsel for any party authored this brief in whole or in part. The National Republican Congressional Committee provided funding for this brief, but no other entity or person, other than *Amici* or their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The district court’s reversible error in this Section 2 case has commanded this Court’s attention for the second time in as many years. This time, the district court started by bungling its own subject-matter jurisdiction when it examined a new redistricting law, passed by the Alabama Legislature, as if it were a court-ordered remedial map. In so doing, the court below took the entirety of its conclusions about the 2021 Plan, bolted them to the 2023 Plan, and then called it a day without actually assessing whether the 2023 Plan survived Section 2 scrutiny by, among other things, conducting a *Gingles* analysis. Not only does this mean that the district court ordered a remedy without determining whether the 2023 Plan violated Section 2, it also flipped the presumption of legislative good faith on its head.

More errors followed. All the evidence before the district court demonstrated that this case is about *partisan* gerrymandering—*not* racial gerrymandering—which means that the Plaintiffs’ claims never belonged in federal court. *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2508 (2019). Specifically, Alabamians elect Republicans because the Democratic Party has failed to persuade Alabamians to vote for Democrats. That these partisan voting trends correlate with some racial voting trends isn’t enough. Section 2 requires causation (vote-dilution “on account of race,” 52 U.S.C. § 10301(a)) rather than correlation, and the district court’s failure to grasp this point led it to flout Section 2’s text, as well as precedent not only from this Court but also from most of the Circuits that have addressed the issue. Reversal is warranted.

ARGUMENT

I. BECAUSE ALABAMA'S 2023 PLAN WAS NEVER FOUND TO VIOLATE SECTION 2, THE DISTRICT COURT HAD NO JURISDICTION TO ORDER A REMEDIAL MAP.

The district court's first, and most fundamental, error strikes at the heart of its own power to adjudicate the Plaintiffs' Section 2 claims. A court may not issue a remedy before determining whether a litigant has a right to that remedy. But that is exactly what the district court did when it ordered a remedial map without assessing whether the 2023 Plan violated the Voting Rights Act. Even more, the district court added federalism insult to subject-matter jurisdiction injury by inverting the presumption of good faith that must be afforded to the Alabama Legislature.

At a previous stage in this very case, this Court instructed the district court to “conduct ‘an intensely local appraisal’ of the electoral mechanism at issue, as well as a ‘searching practical evaluation of the ‘past and present reality.’” *Allen v. Milligan*, 143 S. Ct. 1487, 1503 (2023) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 79 (1986)). This means that the district court had an obligation to examine the 2023 Plan closely and individually, and then compare it to a “reasonably configured” illustrative plan. *Id.* Only then would the district court have the moment to assess whether “[d]eviation from that [illustrative] map” demonstrates that the 2023 Plan “has a disparate effect on account of race.” *Id.* at 1507.

The district court elided this Court's mandate. Doing so was error and requires correction.

A. The district court overstepped its Article III authority by failing to conduct a local assessment of the 2023 Plan.

For nearly thirty years, the Court has made crystal clear that every challenged legislative act, especially those establishing voting-district boundaries, must be assessed on their own terms. Indeed, “the burden of proof lies with the challenger, not the State,” *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018) (citing *Reno v. Bossier Par. School Bd.*, 520 U.S. 471, 481 (1997)), and “the good faith of [the] state legislature *must* be presumed.” *Id.* (quoting *Miller v. Johnson*, 515 U.S. 900, 915 (1995)) (emphasis added). For this reason, a finding of earlier alleged bad acts cannot be used to circumvent the intensely local Section 2 assessment. *Id.* “[P]ast discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful.” *Id.* (quoting *Mobile v. Bolden*, 446 U.S. 55, 74 (1980) (plurality opinion)).

To be certain, the past is relevant. But because it is only “one evidentiary source,”² it cannot be dispositive. And as a matter of fundamental fairness, the past can never be used to by-pass answering the necessary questions that this Court has established for determining whether Section 2 liability arises. In other words, the question remains whether the legislative act subject to challenge—here, the 2023 Plan—violates the Voting Rights Act in its own right. *See Abbott*, 138 S. Ct., at 2324.

The district court skirted its obligation to answer the Section 2 liability question. Instead, it reasoned that the 2023 Plan was enacted to remedy the 2021

² *Id.* (citing *Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977)); *see also Covington v. North Carolina*, 283 F. Supp. 3d 410, 431 (M.D.N.C. 2018), *aff’d in relevant part*, *North Carolina v. Covington*, 138 S. Ct. 2548 (2018).

Plan, which the district court had enjoined. And its expectation that the 2023 Plan must absolve the taint of the 2021 Plan meant that it declined to assess whether the 2023 Plan itself transgressed the Voting Rights Act. App. 116-129. Indeed, the district court chose not to conduct a new *Gingles* Analysis for the 2023 Plan, and instead used arguments, expert testimony, and illustrative plans keyed into the 2021 Plan to reject the 2023 Plan. *Id.*

That was error. The 2023 Plan is a new map, and the Legislature enacted it on its own accord—not because the district court ordered it to do so. For that reason, the district court had an obligation to assess the 2023 Plan on its own merits, and not to transpose its earlier indictment of the 2021 Plan onto a wholly different legislative enactment.

Article III authority “amounts to little more than the negative power to disregard an [unlawful] enactment.” *Barr v. Am. Ass’n of Political Consultants, Inc.*, 140 S. Ct. 2335, 2351 n.8 (2020) (plurality opinion) (quoting *Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923)). Once the State enacted the 2023 Plan, the injunction directed to the 2021 Plan lost all legal effect. Challenges to an “old rule” become “moot” when a new rule takes its place. *See New York State Rifle & Pistol Ass’n, Inc. v. City of New York*, 140 S. Ct. 1525, 1526 (2020). And although a “plaintiff may have some residual claim under the new framework,” any earlier order should be vacated and so that the parties, “if necessary,” can “amend their pleadings or develop the record more fully” in connection with the new, separate legislative enactment. *Id.* (quoting *Lewis v. Cont’l Bank Corp.*, 494 U. S. 472, 482-483 (1990)).

Simply put, because the State passed a new law, the district court had to assess that new law from the ground up. Article III does not allow federal courts to sit as permanent “councils of revision.” *United States v. Rutherford*, 442 U.S. 544, 555 (1979); *see also United States v. Richardson*, 418 U.S. 166, 189 (1974) (Powell, J., concurring) (explaining that under the Council of Revision, “every law passed by the legislature automatically would have been previewed by the Judiciary before the law could take effect”). Courts decide cases or controversies, and until the 2023 Plan was enacted, it did not, and could not, give rise to a case or controversy that the district court had any power to adjudicate. The 2023 Plan was not a subject of any complaint, it was not ordered as a remedy to any final judgment, and it was not examined in a way that provided the adversarial assessment necessary for the district court to issue a remedy. Simply put, the district court lacked jurisdiction to rule as it did on the 2023 Plan.

B. The district court improperly inverted the presumption of constitutionality afforded to the Legislature.

The district court did not merely transgress its Article III power when it tossed the 2023 Plan without conducting a new Voting Rights Act analysis. It also dispensed with the presumption of constitutionality and good faith to which the Alabama Legislature was entitled. In other words, the district court presumed racial discrimination and asked the State to disprove it. And by burdening the State to prove Section 2 compliance, rather than placing the burden on the Plaintiffs to prove their Section 2 claims, the district court aggravated its error.

The district court's analysis shows that it presumed that the 2023 Plan was unconstitutional. Rather than begin with the *Gingles* preconditions, the district court queried whether “the 2023 Plan *completely remedies* the likely Section Two violation that [it] found” App.134 (emphasis added). After concluding that the 2023 Plan did not do so, the district court enjoined it because it contained one, and not two, majority-minority districts. App.135. By construing the 2023 Plan as a remedial map and conditioning its imprimatur on hitting a majority-minority-district quota, the district court inverted the burden of proof. That error demands reversal.

II. PARTISAN POLITICS, NOT RACE, HAS DRIVEN THE VOTING PATTERNS OF ALABAMIANS, AND THAT DOOMS THE PLAINTIFFS’ SECTION 2 CLAIMS.

Beyond skipping the *Gingles* preconditions, the district court also disregarded a critical aspect of the totality-of-circumstances analysis: Senate Factor 2—i.e., “the extent to which voting in the elections of the state or political subdivision is racially polarized.” S. Rep. No. 97-417, at 29. Unlike *Gingles* Steps 2 and 3 (where a court must ask *how* Black and White voters cast their ballots), Senate Factor 2 looks at *why* voters cast their ballots for certain candidates. That is to say, “what appears to be bloc voting on account of race [which is the inevitable result of satisfying the three *Gingles* preconditions], may, instead, be the result of political or personal affiliation of different racial groups with different candidates.” *Solomon v. Liberty Cnty. Comm’rs*, 221 F.3d 1218, 1225 (11th Cir. 2000).

In other words, causation matters. The district court, however, declined to independently analyze whether Alabama’s voting trends are polarized “on account of race,” or instead on account of the State’s partisan (i.e., Republican) culture. In

deciding that it must be the former, the district court avoided considering the colossal evidentiary proof that Democrats have consistently lost in Alabama not because they are Black, but because the Democratic Party has failed to appeal to Alabama voters for quite some time.

A. Section 2’s totality-of-circumstances analysis requires a showing that racially polarized voting occurs on account of (rather than in correlation with) race.

Section 2 forbids “denial or abridgement of the right of any citizen of the United States to vote *on account of race or color*.” 52 U.S.C. § 10301(a) (emphasis added). The totality-of-circumstances analysis in subsection (b) requires courts to assess the “equa[l] open[ness]” of a state’s political process, and whether minority voters have “less opportunity” to “participate in the political process and to elect representatives of their choice.” *Id.* § 10301(b). Moreover, Section 2’s “on account of race” language mirrors and gives effect to the nearly identical language found in the Fifteenth Amendment. *See Mobile*, 446 U.S., at 60–61; *see also* U.S. Const. amend. XV, § 1.

It is “a cardinal principle of statutory construction that [courts] must give effect, if possible, to every clause and word of a statute,” *NLRB v. SW Gen., Inc.*, 580 U.S. 288, 304 (2017) (citation omitted). And so, the phrase “on account of race” must be construed as a prerequisite to a finding of Section 2 liability. Race—not party preference or some other variable—must cause the purported injury if Section 2 liability is to arise. *See Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2337 (2021).

Congress enacted Section 2 to address the specific problem of discrimination against racial minorities in state voting processes. *See Mobile*, 446 U.S., at 60–61. Although Section 2 was later amended to eliminate the intent requirement, the class of individuals protected by the statute—minority voters whose rights have been abridged or denied “on account of race or color”—has not changed. After Section 2(a) clearly established *whose* rights the statute was intended to protect, the 1982 amendment (codified as Section 2(b)) explained *how* a violation of those rights could be established: the totality-of-circumstances test.

Section 2(b) requires the Plaintiffs to prove that “political processes . . . are not equally open to participation by members of a class of citizens protected by subsection (a).” 52 U.S.C. § 10301(b). In other words, the statute requires that minority voters prove that they have been impacted *because of their race or color*. And the statute is crystal clear about how the Plaintiffs must carry this burden. They must do so by showing that they “have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” *Id.*

Voters, including minority voters, may have “less opportunity” to elect the representative they would prefer for any number of non-race-related reasons. The most obvious is partisanship; because of how voting works, if a person of one political persuasion lives in an area with an overabundance of voters who associate with a different political party, that former necessarily has “less opportunity” to elect his or her candidate of choice. Democrats who live in Wyoming (the most Republican state)

and Republicans who live in Vermont (the most Democratic state) experience this with every election.

If this is why a racial group has not successfully elected their candidate of choice (i.e., if that racial group prefers Democrat candidates in an overwhelmingly Republican state), their inability to elect their candidates of choice is *not* “on account of [their] race.” And if it is not, then Section 2 provides no remedy. The Voting Rights Act was never intended to guarantee the success of one political party given the coincidence that a minority group prefers that political party. *See Frank v. Walker*, 768 F.3d 744, 754 (7th Cir. 2014); *see also Gingles*, 478 U.S., at 83 (White, J., concurring) (“Justice Brennan states . . . that the crucial factor in identifying polarized voting is the race of the voter and that the race of the candidate is irrelevant. Under this test, there is polarized voting if most white voters vote for different candidates than the majority of the blacks, regardless of the race of the candidates. I do not agree.”).

B. The Court’s post-*Gingles* jurisprudence has clarified that correlation alone cannot establish a Section 2 violation.

In *Thornburg v. Gingles*, this Court’s splintered opinion appeared to create a conditional guarantee of proportional representation while diminishing the effect of the “on account of race or color” qualifier in Section 2. 478 U.S. at 63. The second and third preconditions that emanated from that decision focus solely on the political cohesiveness of a given minority group and their White counterparts, but they do not require the reviewing court to investigate the necessary cause of any disparate effect on racial minorities. *Id.* In fact, the Justice Brennan’s plurality opinion expressly

disclaimed causation as relevant for purposes of the preconditions (even though Senate Factor 2 plainly requires it). *See id.* (“[T]he reasons black and white voters vote differently have no relevance to the central inquiry of § 2.”). Others disagreed. *See id.* at 83 (White, J., concurring) (disagreeing with Justice Brennan on this point).

Despite Justice Brennan’s preferred *Gingles* free-for-all, the Court soon began clarifying that not all voting laws affecting a minority community give rise to Section 2 liability. *See, e.g., Chisom v. Roemer*, 501 U.S. 380, 383–84 (1991) (noting that the 1982 Voting Rights Act amendments “make clear that *certain* practices and procedures that result in the denial or abridgment of the right to vote are forbidden” (emphasis removed)). Most recently, the Court reviewed a Section 2 challenge to Arizona’s precinct-voting rule and ballot-harvesting restrictions in *Brnovich*, 141 S. Ct., at 2330. The *Brnovich* majority confirmed that the Court’s “statutory interpretation cases almost always start with a careful consideration of the text, and there is no reason to do otherwise” when analyzing Section 2. *Id.* at 2337. The Court then quoted the “on account of race or color” language in Section 2(a), and it noted that it “need not decide what this text would mean if it stood alone because §2(b), which was added to win Senate approval, explains what must be shown to establish a §2 violation.” *Id.* This confirms that Section 2(b)’s totality-of-the-circumstances test must be read *in pari materia* with Section 2(a)’s condition that Section 2 liability does not arise unless an injury occurs on account of the voter’s race.

The test that the *Brnovich* Court set forth recognizes the primacy of causation. The Court first explained that “equal opportunity helps to explain the meaning of

equal openness” in Section 2(b), which confirms that Section 2 is directed to ensuring equality of access, but not equality of electoral outcomes. *Id.* at 2338. It then identified five factors pertinent to the analysis, including the overall size of the burden imposed by the challenged law and the size of any disparities in the law’s impact on racial minority groups. *Id.* at 2339–40. The Court noted that, “[t]o the extent that minority and non-minority groups differ with respect to employment, wealth, and education, even neutral regulations, no matter how crafted, may well result in some predictable disparities in rates of voting.” *Id.* at 2339. But it remains true that if the effect of a voting law merely correlates with race, it does not necessarily mean that the law operates “on account of race.” The *Brnovich* factors show that Section 2 hinges on something more than mere raw disparate impact, especially since a disparate impact might be no more than a mere coincidence tied to partisan preferences.

C. The Circuit Courts agree that causation matters.

In addition to this Court’s clarifying precedents, the Courts of Appeal are in virtual lockstep with each other that correlation is not causation, and the latter is needed for Section 2 liability to arise. Race, not some other variable, must be the cause of electoral failure for purposes of a Section 2 claim.

In *SCLC v. Sessions*, for example, the Eleventh Circuit held that “any evidence that explain[s] election results [i]s relevant,” especially where there is “ample evidence . . . to support the court’s conclusion that factors other than race, *such as party politics* and availability of qualified candidates, are driving the election results.” 56 F.3d 1281, 1293–94 (11th Cir. 1995) (emphasis added). The Court reaffirmed this

principle in *Solomon v. Liberty County Commissioners*: “what appears to be bloc voting on account of race may, instead, be the result of political or personal affiliation of different racial groups with different candidates.” 221 F.3d, at 1225. And in *Greater Birmingham Ministries v. Secretary of Ala.* (a Section 2 challenge to Alabama’s voter ID law), the Eleventh Circuit again emphasized that causation rather than correlation is what matters for Section 2 purposes. 992 F.3d 1299, 1329 (11th Cir. 2021). In that case, the court determined that “minority voters in Alabama are slightly more likely than white voters not to have compliant IDs,” but it nevertheless held that “the plain language of Section 2(a) requires more” than this showing of disparate impact. *Id.* at 1330.

The First, Second, Seventh, and Ninth Circuits have also adopted this same causation-not-correlation approach.³ Meanwhile, in upholding a Virginia voter ID law against a Section 2 challenge, the Fourth Circuit joined its sister courts in holding that a demonstration of disparate impact alone is insufficient when a plaintiff fails to establish the necessary causal link. *See Lee v. Va. State Bd. of Elections*, 843 F.3d

³ *See Gonzalez v. Arizona*, 677 F.3d 383, 405 (9th Cir. 2012) (en banc) (“Although proving a violation of § 2 does not require a showing of discriminatory intent, only discriminatory results, proof of ‘causal connection between the challenged voting practice and a prohibited discriminatory result’ is crucial.” (citations omitted)); *Goosby v. Town Bd. of Town of Hempstead*, 180 F.3d 476, 493 (2d Cir. 1999) (“We . . . ratify the approach taken by the district court to consider the political partisanship argument under the ‘totality of circumstances’ analysis”); *Milwaukee Branch of the NAACP v. Thompson*, 116 F.3d 1194, 1199 (7th Cir. 1997) (explaining that the reasons why candidates preferred by black voters lost should be considered in the totality-of-circumstances inquiry); *Vecinos De Barrio Uno v. City of Holyoke*, 72 F.3d 973, 983 (1st Cir. 1995) (holding that non-racial reasons for divergent voting patterns should be considered under the totality-of-circumstances test).

592, 601 (4th Cir. 2016) (“We conclude that § 2 does not sweep away all election rules that result in a disparity in the convenience of voting.”). Similarly, the Sixth Circuit—in upholding Ohio’s twenty-nine-day early-voting period against a Section 2 challenge—held that Section 2 plaintiffs must demonstrate that the specific law they are challenging, “as opposed to non-state created circumstances[,] *actually makes voting harder*” for minority voters. *Ohio Democratic Party v. Husted*, 834 F.3d 620, 631 (6th Cir. 2016) (emphasis in original).

D. The district court ignored judicially recognized evidence that racially polarized voting in Alabama is driven by partisan politics.

Contrary to the Court’s jurisprudence and that of various Courts of Appeal, the district court ignored substantial evidence recognized by a sister court showing that racially polarized voting in Alabama arises from non-racial factors such as ideology and partisanship. Specifically, in *Alabama State Conference of the NAACP v. Alabama*, the Middle District of Alabama observed that the State is “one of the most Republican [jurisdictions] in the entire South,” a fact that “has made it virtually impossible for Democrats—of any race—to win statewide in Alabama in the past two decades.” 612 F. Supp. 3d 1232, 1291 (M.D. Ala. 2020). It noted that all Black candidates for statewide office since 2000 have run as Democrats and lost, while two Black-preferred (White) Democrat candidates during that same period have won three races (Sue Bell Cobb for Supreme Court Justice, and Doug Jones for U.S. Senate). *Id.* The court further commented that White Democratic primary voters in Alabama appear to give equal support to Black Democratic candidates in appellate

judicial elections. *Id.* The only logical conclusion is that Black candidates are not penalized at all by their race. *Id.* (citing *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 879 (5th Cir. 1993) and *Lopez v. Abbott*, 339 F. Supp. 3d 589, 613 (S.D. Tex. 2018)).

The court then explored the true cause behind racially polarized voting. It first observed that the Alabama Democratic Party is significantly weaker than its Republican counterpart. “One need look no further than the past four general elections, in which Democrats put up candidates for only twelve out of forty-six statewide offices, and the failure of any Democratic candidate to qualify to run in the March 3, 2020 primary for six open appellate judicial seats, to see that the Alabama Democratic Party is on life support.” *Id.* at 1293. Indeed, the fractured state of the Alabama Democratic Party led to a state-court action in which one faction of the party sued the other for party control. *See Verified Complaint, Ala. Democratic Party, et al. v. Gilbert, et al.*, No. CV-2019-000531.00 (Circuit Court of Montgomery Cty., Ala. Oct. 30, 2019). Considering that reality, the Middle District of Alabama found that, “without a viable party behind them, Democratic candidates of any race have an uphill battle.” *Id.*

The court next observed that straight-ticket voting in Alabama “only exacerbates the phenomenon of partisan-driven election results.” *Alabama State Conference of the NAACP*, 612 F. Supp. 3d, at 1296. Indeed, “[m]any voters are driven to the polls because of races at the top of the ticket, then end up voting for down-ballot candidates of the same party as their preferred top-of-the-ticket candidates.” *Id.* The

court noted that, between 2008 and 2014, “about a quarter of total ballots cast in Alabama were straight-ticket Democrat, and another quarter of total ballots in Alabama cast were straight-ticket Republican.” *Id.* It also found that “the most recent numbers show that straight-ticket voting is even more prevalent today and decisively in the Republican party column.” *Id.*

Beyond the fissured state of the Alabama Democratic Party and the robust practice of straight-ticket voting, the court also found that voters in Alabama grasp the political stances of each party (and are thus largely motivated by the ideological contrast between them). Specifically, “because voters must approve constitutional amendments on a statewide basis, the results of voting on those amendments provide a snapshot into Alabamians ideology.” *Id.* at 1300. And voters in Alabama consistently support Republican Party issues like (1) the pro-life movement, (2) the right to work, (3) the Second Amendment, and (4) traditional notions of marriage and the family. *Id.* at 1301. Relatedly, the court found that tort reform played a key role in the transition from an all-Democrat to an all-Republican Supreme Court of Alabama. *Id.* at 1302. It concluded that voters in Alabama were turned off by Democrat-backed excessive jury verdicts that gave the State a national reputation as “tort hell” in the 1980s and 1990s. *Id.* (citing *BMW of N. America, Inc. v. Gore*, 517 U.S. 559 (1996)).

At bottom, the court concluded that voters overwhelmingly expressed their conservative bona fides at the ballot box. *Id.* And for that reason, the court in

Alabama State Conference of the NAACP concluded that party, not race, drives election results in Alabama. *Id.* at 1306.

The district court here, however, declined to recognize any of these findings. In its decision on the 2021 Plan, it retorted: “read in context, that finding does not stand for the broad proposition that racially polarized voting in Alabama is simply party politics. Accordingly, we cannot independently reach the same conclusion that the *Alabama State Conference of the NAACP* court reached, and we cannot assign the weight to its conclusion that Defendants urge us to assign.” *Singleton v. Merrill*, 582 F. Supp. 3d 924, 1019 (N.D. Ala. 2022). This was a plainly erroneous conclusion and contrary to a correct application of Section 2.

III. THE DISTRICT COURT’S ERROR HAS RESULTED IN A COURT-ORDERED PARTISAN GERRYMANDER.

The above shows that the district court willfully turned a blind eye to the fact that “what appears to be bloc voting on account of race may, instead, be the result of political or personal affiliation of different racial groups with different candidates.” *Solomon*, 221 F.3d, at 1225. This was improper since, as Justice O’Connor explained in her *Gingles* concurrence, Section 2 was not designed to proscribe redistricting schemes where there is “an underlying divergence in the interests of minority and white voters” that does not arise because of race. 478 U.S. at 100 (O’Connor, J., concurring in the judgment).

Had the district court considered the well-supported explanation that Black-preferred candidates in Alabama lose because they are running as Democrats in a Red State, it would have caught on that the Plaintiffs are actually interested in

expanding the political power of the Alabama Democratic Party through a Section 2 lawsuit. By acquiescing in this partisan power-grab, the district court exceeded its subject-matter jurisdiction and trampled the First Amendment rights of Republican voters and candidates in Alabama.

A. Ignoring non-racial explanations for racially polarized voting allows litigants to mask nonjusticiable partisan gripes as Section 2 vote-dilution claims.

Under Article III, courts may only decide cases “historically viewed as capable of resolution through the judicial process.” *Rucho*, 139 S. Ct., at 2493–94. Cases that lack judicially manageable standards constitute nonjusticiable political questions. *Id.* at 2494. For this reason, this Court recognizes only three types of redistricting claims as justiciable: (1) one-person, one-vote challenges; (2) racial gerrymandering claims; and (3) vote-dilution claims under Section 2 of the Voting Rights Act. *Id.* at 2495–96; *Gingles*, 478 U.S., at 70–71. Because there are no judicially manageable standards to adjudicate partisan-gerrymandering claims, and because partisanship is expected to happen in redistricting, partisan-gerrymandering claims are not justiciable. *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973). Were it otherwise, courts would “risk assuming political, not legal, responsibility for a process that often produces ill will and distrust.” *Rucho*, 139 S. Ct., at 2498.

The problem with adjudicating partisan-gerrymandering claims is that they presume “that groups with a certain level of political support should enjoy a commensurate level of political power and influence.” *Id.* at 2499. But federal courts lack both the authority and competence to apportion political power. *Id.* They cannot

“vindicate[e] generalized partisan preferences.” *Id.* at 2501. In other words, the lack the ability or the authority to “allocate political power and influence.” *Id.* at 2508.

A necessary corollary to these premises is that federal courts have the responsibility *not* to confuse partisan gerrymandering with race-based claims—no matter the guise under which the plaintiffs may bring them. And the district court failed to live up to this duty. It accepted without any scrutiny the Plaintiffs’ argument that the 2023 Plan pre-determines racial gains and losses, when in reality the map reflects the partisan reality of Alabama. Black voters in Alabama are cohesive because they vote for Democrats, and under the 2023 Plan, Democrats will likely not win elected positions because Alabama voters overwhelmingly favor Republican candidates. Using the Voting Rights Act to allocate political power proportionally means that the partisan wolf has arrived in the garb of a racial sheep. *Cf. Morrison v. Olson*, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting). This Court has a duty to stop this subterfuge in its tracks.

B. The district court’s failure to require a showing of causation resulted in an application of Section 2 that abridges the First Amendment rights of non-Democrat Alabamians.

By enjoining the 2023 Plan, district court has not only allowed a partisan-gerrymandering claim to proceed. It has also invited the Plaintiffs to wield Section 2 as a cudgel against any state law that fails to advance the institutional interests of the Alabama Democratic Party. The Plaintiffs have prevailed on the district court their theory that Black cohesion for Democrat candidates prevents the State from enacting measures that hurt that party because racial and partisan preferences are

(in their view) inseparable. But as discussed above, the inability of Democratic candidates to win elections results from the decline of the Democratic Party in Alabama. It is not about race, and it hasn't been for years. *See Alabama State Conference of the NAACP* 612 F. Supp. 3d, at 1292–96.

The district court should have disentangled the threads linking the race of Alabama voters to their preference for a certain party's candidates. Had it done so, it would been compelled to conclude that the 2023 Plan does not dilute minority votes “on account of race.” By leaving intertwined those threads, the district court allowed the Voting Rights Act to shield the Democratic Party from fair competition with their partisan opponents (and, by extension, unfairly enshrined the Democratic Party's ideas above those held by Republicans and others). This partisan protectionism violates core First Amendment rights, especially the principle against viewpoint discrimination. *See Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 616 (1996) (“The independent expression of a political party's views is ‘core’ First Amendment activity no less than is the independent expression of individuals, candidates, or other political committees.” (citations omitted)); *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1127 (2022) (“In prohibiting only one perspective, [the government] targets ‘particular views taken by’ students, and thereby chooses winners and losers in the marketplace of ideas—which it may not do” (citations omitted)).

This means that, by applying Section 2 without considering the cause of racially polarized voting in Alabama, the district court provoked an avoidable

question about the Voting Rights Act's consonance with the First Amendment. Because "[i]t is a long-standing rule of statutory interpretation that federal courts should not construe a statute to create a constitutional question unless there is a clear statement from Congress endorsing this understanding," the district court was wrong to do so. *Johnson v. Governor of Fla.*, 405 F.3d 1214, 1229 (11th Cir. 2005). Court must "first address whether one interpretation presents grave constitutional questions whereas another interpretation would not, and then examine whether the latter interpretation is clearly contrary to Congressional intent." *Id.* The district court's failure to conduct this analysis warrants reversal.

As explained in Part II, *supra*, Congress intended that Section 2 claims must include proof of causation. 52 U.S.C. § 10301(a)). Applying Section 2 in the way Congress intended it would have avoided the constitutional conflict that the district court has triggered. That the district court opted for the path of greatest constitutional resistance justifies the grant of the State's emergency request.

CONCLUSION

For all these reasons, the Court should grant applications.

September 19, 2023

Respectfully submitted,

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No. 23A231

IN THE
SUPREME COURT OF THE UNITED STATES

HON. WES ALLEN, in his official capacity as the Alabama Secretary of State,
Applicant.

v.

EVAN MILLIGAN, ET AL.,
Respondents.

**SINGLETON RESPONDENTS' OPPOSITION TO EMERGENCY
APPLICATION FOR STAY PENDING APPEAL TO THE SUPREME COURT
OF THE UNITED STATES**

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PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

In addition to the parties and related cases identified in the Application, Respondents include Bobby Singleton, Rodger Smitherman, Eddie Billingsley, Leonette Slay, Darryl Andrews, and Andrew Walker, who were plaintiffs in *Bobby Singleton et al. v. Wes Allen et al.*, No. 2:21-cv-1291-AMM (N.D. Ala.).

RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, there are no parent entities or entities that issue stock at issue in this response and appeal.

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September 19, 2023

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TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT:

In his first appeal, the Secretary asked this Court to rule that drawing racially targeted, majority-Black districts to comply with *Gingles* I is unconstitutional. This Court rejected that argument and held that Alabama’s 2021 plan likely violated Section 2 of the Voting Rights Act. Now, in his second appeal, the Secretary asks this Court to rule that it is unconstitutional to use racially targeted, majority-Black districts to remedy the Section 2 violation affirmed by this Court. But that issue cannot be addressed on this record.

The Secretary does not bring this second appeal with clean hands. The 2023 plan, which Alabama’s Solicitor General helped craft, retains one racially targeted, majority-Black district. That district, which splits voters in Jefferson County by race, derives from a district created in 1992, which the Secretary’s predecessor argued in prior litigation was a racial gerrymander. *Singleton v. Allen*, No. 21-cv-1291-AMM (N.D. Ala.), ECF No. 189 at 5–6. Nevertheless, Alabama’s Legislature has taken a “least change” approach to drafting that district ever since, and it pursued an explicit goal of creating a majority-Black district at least through 2021. *Id.* at 6–13.

The *Singleton* Respondents contend that District 7 in the 2023 plan, which continues to divide Jefferson County along racial lines to produce a majority-BVAP district, is an unconstitutional racial gerrymander because it was drawn without first conducting the careful inquiry required by *Cooper v. Harris*, 581 U.S. 285 (2017), to see if districts drawn without this focus on race would satisfy both the Equal

Protection Clause and the VRA. The District Court reserved ruling on the *Singleton* Respondents' constitutional claim, but it gave them the right to participate fully in the pending Section 2 remedial proceedings. In those proceedings, they have submitted a race-neutral plan that includes two opportunity districts, and they expect the District Court itself to conduct the *Cooper v. Harris* inquiry before adopting any remedial plan that contains majority-Black districts.

Given this posture, the question Alabama is attempting to raise in its second appeal is not ripe. This Court has held that majority-Black districts can be adopted by a state or by a court to comply with the VRA, but only if a *Cooper v. Harris* inquiry shows they are necessary to provide the protected minority an equal opportunity to elect candidates of their choice. *E.g., Wisconsin Legislature v. Wisconsin Elections Commission*, 595 U.S. 398 (2022).¹ If the District Court agrees with the *Singleton* Respondents that in Alabama, two race-neutral crossover districts can satisfy Section 2, and it adopts something like the *Singleton* Plan as the remedy for the Section 2 violation, there will be no majority-Black districts Alabama can challenge.

¹ The *Milligan* and *Caster* Respondents challenge the *Singleton* Respondents' standing on the ground that *Singleton* involves only a constitutional claim, and the District Court decided *Milligan* and *Caster*'s claim under the VRA. As this Court has noted, in redistricting cases, constitutional and statutory issues are interrelated: "The question that our VRA precedents ask and the court failed to answer is whether a race-neutral alternative that did not add a seventh majority-black district would deny black voters equal political opportunity. ... When the Wisconsin Supreme Court endeavored to undertake a full strict-scrutiny analysis, it did not do so properly under our precedents, and its judgment cannot stand." *Wisconsin Legislature*, 595 U.S. at 406. In any event, the *Singleton* Respondents explain below why the District Court's orders make them "parties to the proceeding" in the District Court.

COUNTERSTATEMENT OF THE CASE

Because the Secretary did not name the plaintiffs in *Singleton v. Allen* as Respondents, the *Singleton* Respondents offer a brief explanation of their role as parties to the proceedings below.

In September 2021, the *Singleton* Respondents filed the first challenge to Alabama's congressional districts during this districting cycle, alleging that the districts enacted in 2011 were malapportioned and racially gerrymandered in violation of the Fourteenth Amendment. *Singleton*, ECF No. 1. A three-judge District Court was assigned to hear the case. Following the State's enactment of a new congressional plan in November 2021, the *Singleton* Respondents immediately amended their complaint to remove the claim of malapportionment and add a claim that the enacted 2021 plan perpetuated the unconstitutional racial gerrymander of Jefferson County. *Singleton*, ECF No. 15.

After the *Singleton* Respondents amended their complaint, the Respondents in *Milligan* and *Caster* filed their cases. *Milligan* asserted a claim under Section 2 of the Voting Rights Act, and claims for racial gerrymandering and intentional discrimination in violation of the Fourteenth Amendment. *Caster* asserted a claim under Section 2. *Milligan* was consolidated with *Singleton* for preliminary injunction proceedings. *Caster*, which was a single-judge case because it did not involve constitutional claims, was coordinated with *Singleton* and *Milligan*. In January 2022, the Respondents in *Singleton*, *Milligan*, and *Caster* presented evidence at a seven-day hearing. The three-judge District Court in *Singleton* and *Milligan*, and the single

judge in *Caster*, enjoined the Secretary of State from using the State's 2021 plan in future elections. *Singleton v. Merrill*, 582 F. Supp. 3d 924 (N.D. Ala. 2022). The District Court held that the 2021 plan likely violated Section 2, and it reserved judgment on the gerrymandering claims in *Singleton* and *Milligan*. *Id.* at 1004, 1034–35. This Court stayed that injunction but ultimately affirmed the District Court's decision. *Allen v. Milligan*, 599 U.S. 1 (2023).

On remand, the District Court gave the Alabama Legislature an opportunity to enact a new plan that complied with Section 2, but it also provided that any party, including the *Singleton* Respondents, could file an objection to that plan. *Singleton*, ECF No. 135 at 5. After a new plan was enacted in July 2023, the *Singleton*, *Milligan*, and *Caster* Respondents timely filed objections. The District Court then entered an order setting a hearing in *Milligan* and *Caster* on claims under Section 2, and a hearing the next day in *Singleton* on the racial gerrymandering claim. *Singleton*, ECF No. 154 at 3, 6. (On remand, the *Milligan* Respondents did not actively pursue their gerrymandering claim.) The Court's order also provided that if "the Court determines that the 2023 plan does not remedy the likely Section Two violation the Court previously identified, then the *Singleton* Plaintiffs will be afforded the opportunity to submit remedial maps for a Special Master to consider and to otherwise participate in proceedings before the Special Master to the same degree as the *Milligan* and *Caster* Plaintiffs." *Id.* at 5.

Following the hearings in *Milligan* and *Caster*, and then in *Singleton*, the three-judge District Court entered an order under the *Singleton* and *Milligan*

captions in which it held that the State's 2023 plan failed to remedy the Section 2 violation, and it enjoined the Secretary from using that plan in future elections. The Court again reserved ruling on the *Singleton* gerrymandering claim on the grounds of constitutional avoidance, stating that "Alabama's upcoming congressional elections will not occur on the basis of the map that is allegedly unconstitutional" due to the injunction. App.194. The Court then entered another order under the *Singleton*, *Milligan*, and *Caster* captions in which it directed the Special Master to begin his work. The Court ordered the Special Master to file his proposed maps and report and recommendations on the *Singleton* docket, and it allowed the *Singleton* Respondents to object to the report and recommendations and appear at the same hearing as the *Milligan* and *Caster* Respondents. App.230.

On the day the Court entered its orders, the Secretary moved for a stay pending appeal. Although the motion was filed only on the *Milligan* and *Caster* dockets, the Court ordered the *Singleton* Respondents to respond, which they did. *Singleton*, ECF Nos. 193, 199. The District Court denied the motion to stay in an order under the *Singleton* and *Milligan* captions and filed on the *Singleton* and *Milligan* dockets. App.623. When the Secretary applied to this Court for a stay, the Clerk's office conveyed Justice Thomas's request for a response to the counsel of record for the *Singleton* Respondents, along with the *Milligan* and *Caster* Respondents.

Meanwhile, the *Singleton* Respondents have participated fully in the proceedings before the Special Master. They have filed a proposed remedial plan and a brief supporting it, and they have filed comments on the other plans submitted to

the Special Master. In their capacity as parties, they will file objections to the Special Master's report and recommendations if they decide it is necessary, and they will appear at the District Court's hearing on the proposed remedial plans, which is scheduled for October 3. If the Secretary's application is granted, the proceedings before the Special Master will come to an immediate halt, and the *Singleton* Respondents will lose the opportunity to participate. Moreover, they will be harmed by the implementation of the 2023 plan to the same extent as the *Milligan* and *Caster* Respondents.

Given this history, the *Singleton* Respondents are "parties to the proceeding in the district court" under Supreme Court Rule 18.2, and they continue to have an interest in the outcome of this appeal.

ARGUMENT

The Secretary's application for a stay is dishonest. Over and over, the Secretary claims that the District Court will not accept a congressional plan that lacks two majority-Black districts. Application 2, 3, 4, 5, 17, 18, 19, 20, 22, 23, 24, 26, 27, 31, 32, 33, 34, 35, 36, 37, 38, 39. This is false. The District Court held that a plan enacted by the Alabama Legislature would satisfy Section 2 if it contained "either an additional majority-Black congressional district, *or an additional district in which Black voters otherwise have an opportunity to elect a representative of their choice.*" App.3 (emphasis added). The word "opportunity" appears 140 times in the District Court's order granting an injunction, but the Legislature's option to create an opportunity district, which need not have any particular racial composition, gets

treated in the Secretary's application as a demand for a majority-Black district. Likewise, when the District Court directed the Special Master to recommend remedial plans, it used the exact language quoted above, permitting him to draw a plan without respect to race as long as it creates two opportunity districts. App.224. Yet the Secretary asserts that the District Court has ordered the creation of a gerrymander that segregates Alabamians by race. Application 5, 26, 39, 40.

The Secretary's application is also unripe. It assumes a result—a court-ordered unconstitutional racial gerrymander—that not only has not happened yet, but that the District Court has indicated will not happen. The Court's directions to the Special Master do not require him to gerrymander districts by race, but they do require him to ensure that his recommended plans comply with the Constitution. App.224. In its order denying the Secretary's motion for a stay, the District Court reiterated this fact: "Nothing about our injunction applying [the Voting Rights Act] countenances, let alone demands, segregation, racial gerrymandering, or anything else improper. ... And we have not yet ordered the Secretary to use any specific map, so any suggestion that we are 'segregat[ing]' voters based on race is unfounded and premature." App.645. Because no remedial plan has been ordered, much less a racially gerrymandered remedial plan, and the District Court has indicated that no such plan will be implemented, the Secretary's claims rest on premature, counterfactual speculation.

The closest the Secretary comes to justifying his speculation and pervasive misstatements about the decisions below is to cite the following language, which first appeared in the District Court's order granting an injunction in January 2022:

The Legislature enjoys broad discretion and may consider a wide range of remedial plans. As the Legislature considers such plans, it should be mindful of the practical reality, based on the ample evidence of intensely racially polarized voting adduced during the preliminary injunction proceedings, that any remedial plan will need to include two districts in which Black voters either comprise a voting-age majority or something quite close to it.

Singleton v. Merrill, 582 F. Supp. 3d 924, 936 (N.D. Ala. 2022); Application 5. The District Court's reference to "a voting-age majority or something quite close to it" was not a command but a recognition of the "practical reality" of "intensely racially polarized voting in Alabama." Nowhere did the District Court suggest that it would reject the Legislature's plan based on BVAP statistics. Instead, the District Court required the creation of two opportunity districts, and it enjoined the Legislature's plan for failing to meet that standard: "The State concedes that the 2023 plan does not include an additional opportunity district. ... That concession controls this case." App.5–6. Moreover, the court-ordered process for drawing remedial plans includes no requirement that opportunity districts be majority-Black or "quite close to it." The District Court's instructions to the Special Master do not include this phrase at all. App.218–31.

In any event, there is a glaring exception to the "practical reality" of racially polarized voting in Alabama, which gives the Special Master wide leeway to draw opportunity districts without segregating voters by race. Jefferson County, the most populous county in the State and the home of Birmingham, has a tradition of

significant crossover voting. Although the county's BVAP is just 41.5%, Jefferson County voters have favored the preferred candidate of Black voters in each of the last 99 races for statewide and countywide office. *In re Redistricting 2023*, No. 23-mc-1181-AMM (N.D. Ala.), ECF No. 5 at 13. It is therefore possible to create an opportunity district containing an ideal population of 717,754 without racial gerrymandering by adding just 43,033 people to Jefferson County from nearby counties.

In the proceedings below, the *Singleton* Respondents submitted a remedial plan that does just this. It contains a district that includes Jefferson County and eight precincts in the Birmingham suburbs just over the border in Shelby County, and another district that includes nearly all of the Black Belt. Neither district is majority-Black, but the preferred candidates of Black voters—both Black and White—have usually won more votes than their opponents in these districts.² Thus, both districts are opportunity districts that comply with the Voting Rights Act. *See* 52 U.S.C. § 10301(b) (Voting Rights Act is violated if the members of the minority “have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice”). And the *Singleton* Plan raises no equal-protection concerns because it does not separate voters by race.

² In the proceedings below, the Secretary admitted that in the *Singleton* Plan, the preferred candidates of Black voters received more votes than their opponents in 22 of the last 28 contested races in the Jefferson County district (79%), and in 28 of 28 races in the Black Belt district (100%). During that time, Black candidates received more votes in 8 of 12 races in the Jefferson County district (67%), and 12 of 12 in the Black Belt District (100%). *Singleton*, ECF No. 180-1 at 5.

If the District Court were to adopt the *Singleton* Plan or something like it, the Secretary would have no grounds to complain that Alabama is being “required to violate ‘traditional districting principles such as maintaining communities of interest’ to ‘create, on predominantly racial lines,’ a second majority-black district.” Application 26 (quoting *Abrams v. Johnson*, 521 U.S. 74, 91–92 (1997)). In fact, the *Singleton* Plan respects communities of interest better than the plan the State enacted in 2023. The *Singleton* Plan keeps 16 of the 18 “core” Black Belt counties together in a single district, while the State’s plan splits the Black Belt in half, forcing its residents to share representation in Congress with other regions.³ Application 1 n.2, 14. Although the *Singleton* Respondents take no position on whether the Gulf Coast and the Wiregrass are important communities of interest, the *Singleton* Plan outperforms the State’s plan here as well. Both plans keep the Gulf Coast counties together. But the *Singleton* Plan keeps all the Wiregrass counties together in a single district (except for two counties that are also part of the “core” Black Belt and are in the Black Belt district), while the State’s plan places most of Covington County, a Wiregrass county, in the Gulf Coast district. Application 14. Moreover, the *Singleton* Plan keeps the Jefferson County community of interest intact, while the State’s plan cuts it in two along racial lines. In sum, the *Singleton* Plan outperforms the State’s plan in three of the four communities of interest that have been identified in this case, and performs just as well in the fourth, without segregating voters by race. As long

³ As a matter of geography, no more than sixteen Black Belt counties can share the same district. If seventeen or eighteen counties were in a single district, they would cut off about a million people in southern Alabama, making it impossible to comply with the one-person, one-vote principle because an ideal district contains 717,754 people.

as the *Singleton* Plan is sitting on the Special Master's desk, the Secretary cannot argue that Alabama is being railroaded into a racial gerrymander that ignores traditional districting principles.

CONCLUSION

The Secretary's argument boils down to a counterfactual claim that the District Court rejected the State's congressional plan because it did not have two majority-Black districts, and that the remedial plan will be racially gerrymandered. But the *Singleton* Respondents have submitted a plan that demonstrates how two opportunity districts can be created without resorting to segregation. As long as the Court implements such a plan, the Secretary has no grounds to seek a stay.

Respectfully submitted,

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No. 23A231

In the Supreme Court of the United States

WES ALLEN,
IN HIS OFFICIAL CAPACITY AS THE ALABAMA SECRETARY OF STATE,
Applicant,

v.

EVAN MILLIGAN, ET AL.,
Respondents.

ON EMERGENCY APPLICATION FOR STAY PENDING APPEAL FROM THE
U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

**BRIEF FOR NATIONAL REPUBLICAN REDISTRICTING TRUST
AS AMICUS CURIAE IN SUPPORT OF APPLICANT**

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CONSTITUTIONAL PROVISIONS

U.S. Const. art. I, § 4 1

INTEREST OF *AMICUS CURIAE*

The National Republican Redistricting Trust (“NRRT”) is the central Republican organization tasked with coordinating and collaborating with national, state, and local groups on the fifty-state congressional and state legislative redistricting effort. NRRT’s mission is threefold.*

First, it aims to ensure that redistricting faithfully follows all federal constitutional and statutory mandates. Under Article I, § 4 of the U.S. Constitution, the State Legislatures are primarily entrusted with the responsibility of redrawing the States’ congressional districts. *See Grove v. Emison*, 507 U.S. 25, 34 (1993). Every citizen should have an equal voice, and laws must be followed to protect the constitutional rights of individual voters, not political parties or other groups.

Second, NRRT believes redistricting should be conducted primarily by applying the traditional redistricting criteria States have applied for centuries. This means districts should be sufficiently compact and preserve communities of interest by respecting municipal and county boundaries, avoiding the forced combination of disparate populations as much as possible. Such sensible districts follow the principle that legislators represent individuals living within identifiable communities. Legislators do not represent political parties, and we do not have a system of statewide proportional representation in any State. Article I, § 4 of the U.S. Constitution tells courts that any change in our community-based system of districts

* In accordance with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person or entity, other than *amicus curiae*, its members, or its counsel, made a monetary contribution to its preparation or submission.

is exclusively a matter for deliberation and decision by our political branches—the State Legislatures and Congress.

Third, NRRT believes redistricting should make sense to voters. Each American should be able to look at their district and understand why it was drawn the way it was.

To advance these principles, NRRT regularly files *amicus* briefs in redistricting cases, including two briefs during this Court’s prior consideration of this case and a brief in the district court’s post-remand proceedings.

SUMMARY OF THE ARGUMENT

“Forcing proportional representation is unlawful and inconsistent with this Court’s approach to implementing § 2.” *Allen v. Milligan*, 143 S. Ct. 1487, 1509 (2023). That was the “simple” “point” emphasized by this Court a few months ago. *Id.* That point—and the corollary point that “§ 2 never requires adoption of districts that violate traditional redistricting principles” (*id.* at 1510 (cleaned up))—is “ma[d]e clear” by “the Court’s precedents.” *Id.* at 1518 (Kavanaugh, J., concurring in part). Alabama “could not create” districts that “flout[] traditional criteria.” *Id.* at 1509 (majority op.).

With this guidance in hand, Alabama drew new maps in good faith. The State repealed its prior law and adopted a new one. Yet in the district court, the Plaintiffs then demanded what this Court said is “never require[d]” under the Voting Rights Act: proportional representation via remedial plans that subordinate traditional redistricting criteria to race. The district court acceded to this demand, treating

Alabama's new enacted maps as part of some remedial phase for a trial that has never happened about a law that no longer exists. Calling "the dispositive question" "whether the 2023 Plan contains an additional Black-opportunity district," App. 136, the court enjoined the new plan after a single-day hearing. For a "remedy," it ordered its own maps with an overtly racial goal: "an additional majority-Black congressional district, or an additional district in which Black voters otherwise have an opportunity to elect a representative of their choice." *Id.* at 224.

Every aspect of this process flouts this Court's precedents. First, the Voting Rights Act does not require proportionality, much less super-proportionality. Nor does the VRA require districts that contain less than a majority of a minority group on some sort of crossover opportunity voting theory. This Court has repeatedly rejected reading § 2 to require such remedies. Alabama's 2023 Plan adheres to traditional districting principles better than any of the Plaintiffs' plans, maintaining communities of interest that the 2021 Plan did not. To reject this new Plan—with scant consideration of its merits—turns the Court's VRA precedents on their head.

Second, any suggestion that Alabama is "defying" this Court's opinion in *Allen* by passing a new law that follows traditional districting principles rather than racial proportionality makes no sense. To the contrary, the Plaintiffs' plans, which "[f]orc[e] proportional representation," defy that opinion and a long line of precedents. *Allen*, 143 S. Ct. at 1509. And the Plaintiffs affirmatively told this Court last time around that the district court "did not order Alabama to enact Plaintiffs' plans or even to create a second majority-Black district." Brief for *Milligan* Appellees 2, *Allen*, No. 21-

1086 (U.S. July 11, 2022), <https://tinyurl.com/2x45zehh>. Now, the district court asserts that “[it] said” a second district “is the legally required remedy,” App. 126, and the Plaintiffs claim defiance. The notion that Alabama “defied” an appellate affirmance of a preliminary injunction by passing a new law misunderstands: (1) the tentative nature of every preliminary injunction, (2) the parameters of this preliminary injunction, which merely enjoined enforcement of the old plan and did not require *any* new plan, (3) the limited scope of an appellate holding that a preliminary injunction was not an abuse of discretion, (4) *Allen*’s limitation to § 2 liability standards, and (5) how challenges to new laws are supposed to work—and who bears the burden on such challenges.

Hinging liability on plans that underperform the State’s own map on traditional criteria would turn § 2 into a pure proportionality regime in most cases. And forcing the State to adopt unlawful, race-based districts as a preliminary “remedy” to a non-existent law without adequate consideration of the operative law flouts Article III principles. An emergency stay is necessary.

ARGUMENT

I. *Allen* does not authorize novel, unlawful remedies.

In the district court’s view, § 2 plaintiffs can succeed under *Gingles* even if their proposed plans do not “meet-or-beat” the State’s plan on “*any*” traditional “metric.” App. 148 (emphasis added); *see id.* at 633 (“[T]he Plaintiffs are not required to produce a plan that ‘meets or beats’ the 2023 Plan on any particular traditional districting criteria.”). This holding led the court to dismiss the relevance of the fact that the State’s Plan preserves communities of interest better than any of the Plaintiffs’ plans.

Combining this holding with the realities of computerized mapmaking and the district court's dismissal of the State's redistricting guidelines would transform § 2 into a mandatory proportionality regime. That result contradicts this Court's precedents, including *Allen*.

As Justice Kavanaugh explained in *Allen*, this Court's decisions "have flatly rejected" requiring states to enact "a proportional number of majority-minority districts" by "group[ing] together geographically dispersed minority voters into unusually shaped districts, without concern for traditional districting criteria." 143 S. Ct. at 1518 (opinion concurring in part). Analyzing these precedents, the majority in *Allen* agreed that § 2 "never require[s] adoption of districts that violate traditional redistricting principles" *Id.* at 1510; *see id.* at 1508–10 (collecting cases showing that "the *Gingles* framework itself imposes meaningful constraints on proportionality, as our decisions have frequently demonstrated").

"To ensure that *Gingles* does not improperly morph into a proportionality mandate, courts must rigorously apply" its preconditions. *Id.* at 1518 n.2 (Kavanaugh, J., concurring in part). "[F]or example, it is important that" any remedial map follow traditional districting principles "at least as well as Alabama's redistricting plan." *Id.* Otherwise, § 2 liability would often "turn almost entirely on just one circumstance—disparate impact." *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2341 (2021).¹

¹ Even if § 2 *were* a disparate-impact regime, plaintiffs who failed to produce a map that advanced legitimate redistricting criteria as well as the State's map could not prove that the State's law was "not needed to achieve a government's legitimate goals." *Brnovich*, 141 S. Ct. at 2361 (Kagan, J., dissenting).

If § 2 plaintiffs do not have to show that *any* of their maps adhere to traditional districting principles as well as the state's single map, the state will practically always lose. In *Allen*, the Court quoted academic commentary suggesting that “the universe of all possible connected, population-balanced districting plans that satisfy the state's requirements . . . is likely in the range of googols.” *Allen*, 143 S. Ct. at 1514. Especially if one combines that statement with the court below's dismissal of any traditional requirements that the plaintiffs' map flunk as “particular principle[s] the State defined as non-negotiable,” App. 148,² little is left of *Gingles*. Its preconditions can practically always be satisfied. And states will almost always lose, substituting permanent judicial redistricting for rule by the people's representatives.

That cannot be the law. This Court has “repeatedly observed” that redistricting “is primarily the duty and responsibility of the States,’ not the federal courts,” and “the *Gingles* factors help ensure that remains the case.” *Allen*, 143 S. Ct. at 1510 (brackets omitted) (quoting *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018)). To protect this balance, a plaintiff must show that its proposed maps outperform the state's map when it comes to traditional districting criteria.

Here, given the nature of Alabama's population and geographic dispersion—only 11 of 67 counties are majority black—it would be surprising to see proportional representation *without* a violation of traditional districting principles. It is therefore unsurprising that the Plaintiffs' proposed remedial plans significantly underperform the State's 2023 Plan when it comes to traditional districting principles, particularly

² See also App. 633 (“The Secretary cannot avoid Section Two liability merely by devising a plan that excels at the traditional criteria the Legislature deems most pertinent.”).

keeping communities of interest together. Under the Court's precedents, reiterated in *Allen*, one of the Plaintiffs' super-proportional remedial plans cannot be substituted for a state plan that adheres to traditional districting principles.

A. Section 2 does not require proportional or super-proportional representation.

The Plaintiffs' proposed remedial plans cannot be substituted for the State's 2023 Plan because § 2 does not guarantee equality through proportional representation. "[T]he ultimate right of § 2 is equality of opportunity, not a guarantee of electoral success for minority candidates." *Johnson v. De Grandy*, 512 U.S. 997, 1014 n.11 (1994). Section 2 is violated only if "the political processes leading to nomination or election . . . are not equally open to participation by members of a class of citizens." 52 U.S.C. § 10301(b). Section 2 specifically disclaims that it "establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." *Id.*; see also *Brnovich*, 141 S. Ct. at 2342 n.14 (noting this disclaimer as "a signal that § 2 imposes something other than a pure disparate-impact regime").

Thus, "[f]ailure to maximize [minority representation] cannot be the measure of § 2." *De Grandy*, 512 U.S. at 1017. In *De Grandy*, the Court examined proportionality only as potentially relevant in the "totality of circumstances" analysis. *Id.* at 1011. But the Court cautioned that "the degree of probative value assigned to disproportionality, in a case where it is shown, will vary not only with the degree of disproportionality but with other factors as well." *Id.* at 1021 n.17. "[L]ocal conditions" matter. *Id.* (cleaned up). And even purported proportionality is not "a safe harbor for any districting scheme." *Id.* at 1018. The "totality-of-circumstances

analysis” cannot be “reduced” to the “single factor” of “proportionality.” *Wisconsin Legislature v. Wisconsin Elections Comm’n*, 142 S. Ct. 1245, 1250 (2022). In particular, as *Allen* reiterated, proportionality cannot be substituted for traditional districting principles.

Miller v. Johnson provides a good example of how this analysis works in practice. There, the Court explained that to establish a racial gerrymandering claim, “a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles . . . to racial considerations.” 515 U.S. 900, 916 (1995) (cleaned up). “Where these or other race-neutral considerations are the basis for redistricting legislation, and are not subordinated to race, a State can defeat a claim that a district has been gerrymandered on racial lines.” *Id.* (cleaned up).

In *Miller*, the Court invalidated congressional maps drawn in Georgia that sought proportional representation. At the insistence of the U.S. Department of Justice, the state legislature had drawn three of 11 districts as majority-minority to mirror the State’s black population (27%). *Id.* at 906–07, 927–28. The Court rejected those maps because, as the State had all but conceded, “race was the predominant factor in drawing” the new majority-minority district. *Id.* at 918. “[E]very objective districting factor that could realistically be subordinated to racial tinkering in fact suffered that fate.” *Id.* at 919 (cleaned up). Even where “the boundaries” of the new district “follow[ed]” existing divisions like precinct lines, those choices were themselves the product of “design[] . . . along racial lines.” *Id.* (cleaned up).

The Court rejected this racial gerrymander, specifically holding that “there was no reasonable basis to believe that Georgia’s earlier [non-proportional] plans violated” the VRA. *Id.* at 923. “The State’s policy of adhering to other districting principles instead of creating as many majority-minority districts as possible does not support an inference that the plan . . . discriminates on the basis of race or color.” *Id.* at 924. Because engaging in “presumptively unconstitutional race-based districting” would have brought the VRA “into tension with the Fourteenth Amendment,” the Court rejected the State’s maps, even though those maps provided proportional representation. *Id.* at 927. As the Court explained, “It takes a shortsighted and unauthorized view of the Voting Rights Act to invoke that statute, which has played a decisive role in redressing some of our worst forms of discrimination, to demand the very racial stereotyping the Fourteenth Amendment forbids.” *Id.* at 927–28.

The Court thus remanded the case, and after the state legislature failed to act, the district court drew maps with only one majority-minority district (9%)—meaning representation that fell far below black Georgians’ 27% share of the population. *Abrams v. Johnson*, 521 U.S. 74, 78 (1997); *see id.* at 103 (Breyer, J., dissenting). “The absence of a second, if not a third, majority-black district” was “the principal point of contention” in the second appeal to this Court. *Id.* at 78 (majority opinion). Yet the Court upheld the district court’s maps, which focused on “Georgia’s traditional redistricting principles.” *Id.* at 84. The district court had “considered the possibility of creating a second majority-black district but decided doing so would require it to

subordinate Georgia's traditional districting policies and consider race predominantly." *Id.* (cleaned up).

This Court agreed with that conclusion, explaining "that the black population was not sufficiently compact" for even "a *second* majority-black district." *Id.* at 91 (emphasis added)). Thus, even getting to two majority-minority districts (18%) by focusing on race would have violated the Equal Protection Clause, and the Court rejected the use of DOJ's proposed "plan as the basis for a remedy [that] would validate the very maneuvers that were a major cause of the unconstitutional districting" at issue in *Miller*. *Id.* at 86; *see id.* at 109 (Breyer, J., dissenting) ("The majority means that a two-district plan would be unlawful—that it would violate the Constitution.").

In *Allen*, this Court highlighted *Miller* and several other precedents, including *Shaw v. Reno* and *Bush v. Vera*, in explaining that "traditional districting criteria limit[s] any tendency of the VRA to compel proportionality." 143 S. Ct. at 1509. Here, nearly every county in Alabama is majority white; only 11 of 67 are majority black. The share of any black voting-age population in Alabama (the most Plaintiff-favorable metric) is 25.9%—lower than the Plaintiffs' and the district court's rounded 27% figure (which the court below used to justify its conclusion in the previous preliminary injunction proceeding that 28.57% representation would be proportional). *See Singleton v. Merrill*, 582 F. Supp. 3d 924, 1025 (N.D. Ala. 2022). This corrected BVAP shows that the Plaintiffs are seeking super-proportional representation. *Amicus* is unaware of any case since the enactment of the Voting

Rights Act in which a federal court's mandate of a maximization plan providing for super-proportional representation was affirmed by this Court.³

Tellingly, the “race-neutral plan” demanded by the Plaintiffs on their racial gerrymandering claim was a “decrease [in] the BVAP in District 7 to around 50%” and a redrawn District 2 “with [a] BVAP[]” of “almost 40% as opposed to the current 30%.” *Milligan* D. Ct. Dkt. 69, at 31. That is exactly what the State’s 2023 Plan provides: by the parties’ stipulations, District 7 “has a BVAP of 50.65%,” and District 2 “has a BVAP of 39.93%.” App. 88. Neither the Plaintiffs nor the district court explained why a § 2 remedy would look so different—or how judicially-imposed intentional discrimination to overcome the Plaintiffs’ own race-neutral ideal could coexist with the Equal Protection Clause. On that point, even as two sets of Plaintiffs here demanded super-proportional remedies, the *Singleton* Plaintiffs doubted whether that plan “could satisfy strict scrutiny under the Constitution because of the way it splits Mobile and Jefferson County along racial lines.” *Milligan* D. Ct. Dkt. 220-1, at 71–72; *see Singleton* D. Ct. Dkt. 147, at 1 (arguing that the 2023 Plan’s one majority-minority district makes it “a racial gerrymander that violates the Fourteenth Amendment”).

³ *See United Jewish Orgs. of Williamsburgh, Inc. v. Carey*, 430 U.S. 144, 165 (1977) (suggesting that super-proportional plans would exclude the majority “from participation in the political processes” and amount to “discrimination violative of the Fourteenth Amendment”); *see also id.* at 173 (Brennan, J., concurring in part) (“[W]hat is presented as an instance of benign race assignment in fact may prove to be otherwise,” which “suggest[s] the need for careful consideration of the operation of any racial device, even one cloaked in preferential garb. And if judicial detection of truly benign policies proves impossible or excessively crude, that alone might warrant invalidating any race-drawn line.”). As this Court recently reiterated: “Eliminating racial discrimination means eliminating all of it. And the Equal Protection Clause, we have accordingly held, applies without regard to any differences of race, of color, or of nationality—it is universal in its application.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2161–62 (2023) (cleaned up).

The way to avoid these lose-lose situations for states is for them to be able to rely on neutral principles. Under *Allen* and the established precedents discussed above, a federal court may not mandate even a proportional representation plan in derogation of traditional districting principles. This Court has warned that if a state uses different “line-drawing standards in minority neighborhoods as it used elsewhere in the jurisdiction, the inconsistent treatment might be significant evidence of a § 2 violation, even in the face of proportionality.” *De Grandy*, 512 U.S. at 1015. As to Alabama’s 2021 Plan, the Plaintiffs repeatedly argued that the neutral districting principle was keeping communities together, and “HB1 fragments two significant majority-Black communities of interest—the Black Belt and the City of Montgomery—while maintaining in a single district the majority-White, ‘French and Spanish’-ethnic population of Baldwin and Mobile Counties.” Brief for *Milligan* Appellees, *supra*, at 20–21.

Yet now, faced with the 2023 Plan that keeps the Black Belt together better than the Plaintiffs’ plans *and* maintains communities in the Gulf Coast and Wiregrass, the Plaintiffs demand the inconsistent treatment they had decried by calling for a split of the latter communities. Using the myopic goal of proportionality to excuse this violation of traditional districting principles “would be in derogation of the statutory text and its considered purpose, . . . and of the ideal that the Voting Rights Act of 1965 attempts to foster”: “equal political and electoral opportunity.” *De Grandy*, 512 U.S. at 1018, 1020.

The district court did not explain how its approach to *Gingles* would not impose liability writ large on state plans. Instead, echoing this Court, the district court said that it “did not have to conduct a beauty contest between plaintiffs’ maps and the State’s.” App. 147 (quoting *Allen*, 143 S. Ct. at 1505). Put aside that beauty contests are more administrable than *Gingles*. See *Merrill v. Milligan*, 142 S. Ct. 879, 882–83 (2022) (Roberts, C.J., dissenting) (collecting authorities and noting “the wide range of uncertainties arising under *Gingles*”).⁴ This Court made the “beauty contest” comment about maps that “both” had “a split community of interest.” *Allen*, 143 S. Ct. at 1505. That is no longer the case. See Application 29–31 & n.51. More generally, it is one thing to say, as the three-Justice plurality “precedent” quoted by *Allen* (143 S. Ct. at 1505) did, that *states* “may pass strict scrutiny without having to defeat rival compact districts designed by plaintiffs’ experts in endless ‘beauty contests.’” *Bush v. Vera*, 517 U.S. 952, 977 (1996). It is something quite different to say that the state can be liable based on plaintiffs’ plans that underperform on traditional criteria.

Underscoring the problems with this plaintiffs-always-win approach, the Plaintiffs’ counsel recently insisted in another redistricting case pending before this Court that “splitting” counties and “disregarding communities of interest” proves a “subordinat[ion]” of “traditional districting principles” to a “racial target.” Appellees’ Brief 26, *Alexander v. S.C. Conf. of the NAACP*, No. 22-807 (U.S. Aug. 11, 2023). They attacked South Carolina’s plan because its split of Charleston County purportedly

⁴ “The eyeball test,” for instance, is a creature of *Gingles*, not beauty contests. *Alpha Phi Alpha Fraternity, Inc. v. Raffensperger*, No. 1:21-cv-5337, 2023 WL 5674599, at *11 (N.D. Ga. July 17, 2023) (citing *Allen*, 143 S. Ct. at 1528 n.10); see also *Singleton*, 582 F. Supp. 3d at 1010.

“exil[es]” “residents—particularly in heavily Black North Charleston—from their economically integrated coastal community,” placing “Black Charlestonians” in “a district anchored more than 100 miles away in Columbia.” *Id.* at 16–17. Yet here, the Plaintiffs *demand* that Alabama divide the coastal community of Mobile County to place thousands of black residents—“Black Mobile,” per the Plaintiffs’ expert (App. 158)—in a district anchored more than 160 miles away in Montgomery. And the court below accepted that demand, on the rationale that “there remains a need to split the Gulf Coast” to increase “Black voting strength.” *Id.* at 166. The logic of the decision below puts states in an impossible position.

In sum, under *Allen* and this Court’s longstanding precedents, the Plaintiffs’ super-proportionality-focused plans may not be substituted for the State’s Plan that better satisfies traditional districting principles.

B. Section 2 does not require the creation of opportunity districts.

The Plaintiffs and the district court previously suggested plans that “include two districts in which Black voters either comprise a voting-age majority *or something quite close to it.*” App. 3 (emphasis added). Under established precedent, a remedy of a district that is less than majority black is also unavailable. In *Bartlett v. Strickland*, this Court held “that § 2 does not require crossover districts”—*i.e.*, “one[s] in which minority voters make up less than a majority of the voting-age population.” 556 U.S. 1, 13, 23 (2009) (plurality opinion). That is because § 2 “requires a showing that minorities ‘have less opportunity than other members of the electorate to . . . elect representatives of their choice,’” and in crossover districts, minorities “have no better or worse opportunity to elect a candidate than does any other group of voters with

the same relative voting strength.” *Id.* at 14. If such districts could be judicially imposed, courts would be placed “in the untenable position of predicting many political variables and tying them to race-based assumptions.” *Id.* at 17. But courts are inherently ill-equipped to “make decisions based on highly political judgments of th[ese] sort[s].” *Id.* at 17 (cleaned up); accord *Rucho v. Common Cause*, 139 S. Ct. 2484, 2501 (2019) (explaining that “how close does the split need to be for the district to be considered competitive” is an unanswerable political question). Plus, “[i]f § 2 were interpreted to require crossover districts,” “it would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions.” *Bartlett*, 556 U.S. at 21 (cleaned up).

Of course, “§ 2 allows States to choose their own method of complying with the Voting Rights Act,” and “that may include drawing crossover districts.” *Id.* at 23. But “there is no support for the claim that § 2 can require the creation of crossover districts in the first instance” by a federal court. *Id.* at 24; accord *Caster* D. Ct. Dkt. 179, at 7 (“Plaintiffs are not aware of any case in which a court has approved a Section 2 remedial district with less than a majority-minority voting-age population.”). Nor may a state attempt compliance with § 2 of the Voting Rights Act by using a crossover district when a crossover district violates the state’s own criteria.

In sum, none of the Plaintiffs’ plans provides an appropriate § 2 remedy against the State’s superior 2023 Plan, and the district court had no warrant to order a judicially-created remedial plan.

II. Alabama must have a full opportunity to defend its 2023 Plan.

The district court considered itself “deeply troubled that the State enacted a map that the State readily admits does not provide the remedy we said federal law requires,” adding that it was “disturbed” that Alabama did not have “the ambition to provide the required remedy.” App. 8. The court even said that it was “not aware of any other case in which a state legislature—faced with a federal court order . . . requiring a plan that provides an additional opportunity district—responded with a plan that” “does not provide that district.” *Id.* at 8–9. Likewise, the Plaintiffs have proclaimed that Alabama is somehow “defying” the Supreme Court’s opinion by declining to adopt a proportional representation plan. *See Caster* D. Ct. Dkt. 179, at 1 (“Alabama is in open defiance of the federal courts.”).

All this is quite wrong. Far from being contrary to *Allen*, Alabama’s 2023 Plan faithfully follows it—and the Plaintiffs’ plans disregard it. As shown, Alabama’s 2023 Plan is consistent with a long line of this Court’s precedents holding that states must not subordinate traditional districting principles to race. The Plaintiffs’ remedial plans, on the other hand, perform worse when it comes to those traditional principles because they prioritize super-proportional racial representation. Only the Plaintiffs’ plans depend on splitting up communities of interest into sprawling districts. It is *their* prioritization of proportional representation over neutral districting principles that not only defies this Court but also contradicts their prior arguments.

More fundamentally, this criticism of Alabama ignores the limited nature of initial proceedings like the preliminary injunction affirmed by this Court. The Plaintiffs have never proved that any map violates § 2 on the merits. Alabama has never had

an opportunity to defend any map at trial. The district court never ordered the State to adopt a new map, much less one with an additional majority-minority district. Yet after the State chose to repeal its 2021 Plan and adopt a new plan—as was its prerogative, and without being “required” to do so by any court order—the court below forged ahead with an abbreviated “remedial” proceeding for a tentative injunction against a law that no longer exists. This approach impermissibly relieved the Plaintiffs of their burden in challenging the new plan and deprived Alabama of its right to defend its duly enacted laws.

A. Preliminary proceedings do not decide a case.

Neither the court below nor this Court has held that Alabama’s 2021 Plan violated § 2. That is because the prior proceedings merely involved a preliminary injunction. As this Court explained its holding, “the District Court concluded that plaintiffs’ § 2 claim was likely to succeed under *Gingles*,” and “[b]ased on our review of the record, we agree.” *Allen*, 143 S. Ct. at 1504. This holding does not establish that the 2021 Plan was unlawful. And the entirely different 2023 Plan could not somehow “defy” a non-existent holding.

“At the preliminary injunction stage, the court is called upon to assess the probability of the plaintiff’s ultimate success on the merits.” *Sole v. Wyner*, 551 U.S. 74, 84 (2007). It is “only the parties’ opening engagement,” and any “provisional relief granted” is “tentative” “in view of the continuation of the litigation to definitively resolve the controversy.” *Id.* “[T]he findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).

The scope of an appellate affirmance of a preliminary injunction—like *Allen*—is similarly circumscribed. The issue before an appellate court considering a preliminary injunction is merely “whether the District Court had abused its discretion in issuing a preliminary injunction,” an inquiry that is “significantly different” from “a final resolution of the merits.” *Id.* at 393. Because of the limited “extent of [the] appellate inquiry,” *Allen* necessarily “intimate[d] no view as to the ultimate merits of [the Plaintiffs’] contentions.” *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 934 (1975) (cleaned up). To read the Court’s decision otherwise is to assign it authority it does not have.

If anything, *Allen* was even narrower than a typical decision of a preliminary injunction appeal. That is because this Court limited its consideration to one preliminary injunction factor: likelihood of success. And the Court merely “affirmed” the court below’s determination “that plaintiffs demonstrated a reasonable likelihood of success on their claim that HB1 violates § 2” and thus its preliminary injunction prohibiting “Alabama from using HB1 in forthcoming elections.” 143 S. Ct. at 1502.

Allen decided nothing more. It did not decide that the State *must* draw two majority-minority districts. The district court repeatedly noted its own prior statement that “as a practical reality, the evidence of racially polarized voting adduced during the preliminary injunction proceedings suggests that any remedial plan will need to include two districts in which Black voters either comprise a voting-age majority or something quite close to it.” *Singleton*, 582 F. Supp. 3d at 1033; *see* App. 135. According to the district court, that suggestion meant “the remedy” of “an

additional opportunity district” “was required.” *Id.* at 184; *see id.* at 6, 8, 99, 108–09, 126, 132 (all asserting that the court already required an additional district). Not only does that confuse dicta with judicial orders, but this Court’s opinion was to the opposite effect. And the question of an appropriate remedy was simply not before this Court. *Allen* focused on the *Gingles* factors and § 2 standards for liability, not any remedial question.

The State’s briefs in this Court did not address the district court’s “suggestion” of a remedial majority-minority district. As noted, the *Milligan* Plaintiffs affirmatively told this Court that the district court “did not order Alabama to enact Plaintiffs’ plans or even to create a second majority-Black district.” Brief for *Milligan* Appellees, *supra*, at 2; *see also* Oral Arg. Trans. 70:14–16, *Allen*, Nos. 21-1086, 21-1087 (U.S. Oct. 4, 2022) (*Milligan* counsel: “[W]hat plaintiffs are really looking for is not any sort of guarantee of a second majority-minority district.”), <https://tinyurl.com/j6bmkn8w>.

In light of these statements, it beggars belief for the district court and the Plaintiffs to now suggest that anything short of two majority-minority districts is “defying” any court. This Court did not consider that issue, and the Plaintiffs told the Court that the State need *not* draw two majority-minority districts. No one could pretend that *Allen* somehow held—either in its “result” or in “those portions of the opinion necessary to that result”—that the State had to do what the Plaintiffs told this Court it did not have to do. *Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 67 (1996); *cf. Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 170 (2004) (“Questions which merely lurk in the record, neither brought to the attention of the court nor

ruled upon, are not to be considered as having been so decided as to constitute precedents.” (cleaned up)); *United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 (1952) (where an issue was neither “raised in briefs or argument nor discussed in the opinion of the [c]ourt,” there is no “binding precedent on th[e] point”). The district court says that “[t]he Supreme Court did not . . . warn us that we misstated the appropriate remedy,” App. 135, but silence is not an affirmation of an issue not before the Court—and, as explained below, that was a suggestion in dicta in the district court’s prior order.

Thus, neither the State nor the district court was “bound” to require two majority-minority districts. *Seminole*, 517 U.S. at 67. This Court made no such holding (as the issue was not raised or presented), it made no final determination on the merits of *any* issue here, and it *rejected* the proposition that § 2 requires proportionality. The State did not “defy” this Court; those who insist on two majority-minority districts are defying this Court’s repeated admonitions that § 2 is not a proportionality regime.

B. A new law is not a “remedy” subject to summary adjudication.

Based on its misunderstanding about the judicial process and power, the district court held an abbreviated “remedial” hearing about the preliminary injunction against enforcement of a non-existent law. Then it simply ordered the State to use a court-invented law. That approach misallocates the burden of proof and deprives the State of its right to defend its duly enacted laws.

“The States do not derive their reapportionment authority from the Voting Rights Act, but rather from independent provisions of state and federal law.” *Voinovich v. Quilter*, 507 U.S. 146, 156 (1993) (cleaned up). “Districting involves myriad

considerations—compactness, contiguity, political subdivisions, natural geographic boundaries, county lines, pairing of incumbents, communities of interest, and population equality.” *Allen*, 143 S. Ct. at 1513. And “the federal courts are bound to respect the States’ apportionment choices unless those choices contravene federal requirements.” *Voinovich*, 507 U.S. at 156. The “burden of proving an apportionment’s invalidity squarely on the plaintiff’s shoulders.” *Id.* at 155. Conversely, a state is never required “to prove the [i]nvalidity of its own apportionment scheme.” *Id.* at 156. “Of course, the federal courts may not order the creation of majority-minority districts unless necessary to remedy a violation of federal law.” *Id.*

Here, the preliminary injunction had nothing to do with the State’s 2023 Plan, which was not even enacted yet. The district court had “PRELIMINARILY ENJOIN[ED] Secretary Merrill from conducting any congressional elections according to the [2021] Plan.” *Singleton*, 582 F. Supp. 3d at 936. That injunction was stayed by this Court, and since the stay was lifted, no one contends that a congressional election has been held under the 2021 Plan. The preliminary injunction contained no other *order* requiring the State to do anything about a new plan. The State chose to enact a new map.

There was simply no “required remedy” in the preliminary injunction for the new law “to provide,” as the district court now says over and over. App. 8. This new law, then, cannot be characterized as a “remedy” for a non-existent order. The judicial authority under Article III “amounts to little more than the negative power to disregard an [unlawful] enactment.” *Barr v. Am. Ass’n of Pol. Consultants, Inc.*, 140

S. Ct. 2335, 2351 n.8 (2020) (plurality opinion) (quoting *Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923)). Now that the 2021 Plan has been repealed, any injunction as to that Plan's enforcement is simply inoperative.

The district court's objection to this conclusion underscores its confusion about the nature of Article III's judicial power. According to the district court, requiring Plaintiffs to show that a new law is unlawful would "create[] an endless paradox that only [the State] can break, thereby depriving Plaintiffs of the ability to effectively challenge and the courts of the ability to remedy." App. 126. But challenges to an "old rule" are often "moot." *New York State Rifle & Pistol Ass'n, Inc. v. City of New York*, 140 S. Ct. 1525, 1526 (2020). "[W]here the plaintiff may have some residual claim under the new framework," any prior judgment should be vacated, and "the parties may, if necessary, amend their pleadings or develop the record more fully." *Id.*

Here, of course, there was no final judgment to vacate. And if a state passes a new law that is unlawful, federal courts may intervene in a proper case or controversy if the plaintiff proves his case. If a state "simply re-enacted the same district lines," *Caster* D. Ct. Dkt. 190, at 8, a preliminary injunction would likely not be long in issuing. But federal courts do not sit as permanent "councils of revision." *United States v. Rutherford*, 442 U.S. 544, 555 (1979); see *United States v. Richardson*, 418 U.S. 166, 189 (1974) (Powell, J., concurring) (explaining that under the Council of Revision, "every law passed by the legislature automatically would have been previewed by the Judiciary before the law could take effect"). They decide cases or

controversies, and the 2023 Plan presents a new controversy. This is not “manipulat[ion],” App. 126; it is black-letter Article III law.⁵

Of more concern is what happened here: the court below used a preliminary proceeding against one law to prejudge a new law in an even more abbreviated preliminary proceeding, forcing the State to adopt a court-imposed map without ever allowing it the full opportunity to defend *any* of its plans. Even though the Plaintiffs have the burdens of production and persuasion, the district court did not require the Plaintiffs to prove much at all about the 2023 Plan. Though one section of its lengthy opinion purports to “reset the *Gingles* analysis to ground zero” (after claiming that a reset would be “inconsistent with our understanding of this Court’s judicial power”), that section does no such thing. App. 124, 139. It judges the State’s experts based on its prior “credibility determination[s],” complaining that the State “makes no effort to rehabilitate [one expert’s] credibility.” *Id.* at 141. It complains that “[t]he State does not acknowledge . . . or suggest that any of the problems we identified have been remedied.” *Id.* at 142. It refuses to “defer to the legislative findings” because of its prior finding of likely liability, even while acknowledging that “assum[ing] the truth of our conclusion as a premise of our analysis” was “circular reasoning.” *Id.* at 161–62; *see id.* at 164. The court’s only justification for all this? “This is not an ordinary

⁵ The Eleventh Circuit recently stayed a similar decision treating a new map as “remedial” and thus declining to “consider[] [it] anew,” *Grace, Inc. v. Miami*, No. 1:22-cv-24066, 2023 WL 4853635, at *8 (S.D. Fla. July 30, 2023); *see Grace, Inc. v. Miami*, No. 23-12472, 2023 WL 5286232, at *2 (11th Cir. Aug. 4, 2023). This Court declined to vacate that stay. *Grace, Inc. v. Miami*, No. 23A116, 2023 WL 5284458, at *1 (U.S. Aug. 17, 2023).

case.” *Id.* at 162. But standards and burdens of proving liability apply across Article III cases.

In no other area of law would such contortions be sanctioned in enjoining a state’s duly enacted law. As the district court conceded, if it approached the challenge to the 2023 Plan in an “ordinary” way, its reasoning would be “circular” and unsupportable. *Id.* The district court’s “departure from the statutorily required allocation of burdens” “was error.” *Voinovich*, 507 U.S. at 156. Alabama is due a full opportunity to defend its enacted law, which follows this Court’s opinion in *Allen*.

CONCLUSION

The application should be granted.

Respectfully submitted,

CHRISTOPHER E. MILLS
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(843) 606-0640
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Counsel for *Amicus Curiae*

SEPTEMBER 13, 2023

2:41 
◀ Messages 5G  



Post



Erin Davis
@erindavisnews

[#HappeningNow](#) The Alabama Democratic Conference leader Joe Reed says the ADC plans to file an objection to the plans the special master submitted. Reeds says the maps “wont get the job done.” He says the map they prefer has a BVAP of 54% in district 2. [#alpolitics](#)



Post your reply



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2024 Apr-26 AM 11:02
U.S. DISTRICT COURT
N.D. OF ALABAMA

EXHIBIT B

EXHIBIT

3

**LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN
RSS PRESIDENT CHRIS BROWN
&
SENATOR DAN ROBERTS
ALABAMA SENATE DISTRICT 15**

From: [Daniel Roberts](#)
To: [Chris Brown](#)
Cc: [Bert Jordan](#); [Othni Lathram](#); [Jim Entrekin](#)
Subject: Re: Milligan Subpoena
Date: Saturday, April 13, 2024 1:15:56 AM
Attachments: [Red State Strategies Doc - Apr 5 2024.pdf](#)

You don't often get email from robtel@bellsouth.net. [Learn why this is important](#)

Dear Chris:

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-c-v1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them, along with our legislative legal staff, for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thanks for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Sincerely,
Senator Dan Roberts

On Apr 6, 2024, at 8:34 PM, Chris Brown <cb@redstate-strategies.com> wrote:

Dear Dan:

This letter is to advise you that Red State Strategies, LLC received the attached Subpoena to Produce Documents, etc. on Friday, April 5, in the case known as

Milligan v. Allen

, No.

2:21-cv-1530-AMM (N.D. Ala.).

This case is known as the Congressional redistricting case and involved review of districts drawn by the legislature in 2021, and 2023, and resulted in a “court-drawn” district map that has been used in the 2024 elections.

The subpoena directs production of certain materials that may have been generated as a result of your engagement of RedState.

A copy of the subpoena is attached for your reference.

The focus of the subpoena is communications related to the 2023 Congressional district plan.

However, Request No.

2 does not have a limit as to time if the communications “relate to this litigation,” i.e., the claims made by Milligan, or the defenses made by the State.

The subpoena also seeks Red State Strategies documents or records that may not have been delivered to you but related to the 2023 Congressional district plan.

From my initial review of my record of communications, there are items responsive to the subpoena.

However, it seems substantially possible that these materials are not relevant, or subject to privilege from production on the ground that they are part of your legislative privilege honored by the courts, including the federal courts.

The subpoena directs a response and production by April 19.

Please let me know as soon as possible if you may seek to invoke the legislative privilege for any communications provided to you from Red State Strategies, or sent by you to Red State Strategies, and subject to the directions in this subpoena.

Our prompt response will allow me to make proper filings to protect confidentiality, and honor my duties to the court allowing issuance of the subpoena.

Yours very truly,

Chris Brown, President
Red State Strategies, LLC

CC: Albert L. Jordan, Esq., Wallace, Jordan, Ratliff & Brandt, LLC

LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN
RSS PRESIDENT CHRIS BROWN
&
SENATOR WILL BARFOOT
ALABAMA SENATE DISTRICT 25

From: [Will Barfoot](#)
To: [Chris Brown](#)
Cc: [Bert Jordan](#); [Othni Latham](#); [Jim Entekin](#); cwb@barfootschoettker.com
Subject: Re: Milligan Subpoena
Date: Friday, April 12, 2024 10:50:34 AM
Attachments: [Outlook-i53eda1b.png](#)

Dear Chris:

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-cv-1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them, along with our legislative legal staff, for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thanks for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Sincerely,
Will Barfoot



Will Barfoot

334 | 834 | 3444 barfootschoettker.com

From: Chris Brown <cb@redstate-strategies.com>
Sent: Saturday, April 6, 2024 8:40 PM
To: Will Barfoot <cwb@barfootschoettker.com>
Cc: Bert Jordan <bjordan@wallacejordan.com>

Subject: Milligan Subpoena

Dear Will:

This letter is to advise you that RedState Strategies, LLC received the attached Subpoena to Produce Documents, etc. on Friday, April 5, in the case known as *Milligan v. Allen*, No. 2:21-cv-1530-AMM (N.D. Ala.). This case is known as the Congressional redistricting case and involved review of districts drawn by the legislature in 2021, and 2023, and resulted in a "court-drawn" district map that has been used in the 2024 elections. The subpoena directs production of certain materials that may have been generated as a result of your engagement of Red State Strategies. A copy of the subpoena is attached for your reference.

The focus of the subpoena is communications related to the 2023 Congressional district plan. However, Request No. 2 does not have a limit as to time if the communications "relate to this litigation," i.e., the claims made by Milligan, or the defenses made by the State.

The subpoena also seeks Red State Strategies documents or records that may not have been delivered to you but related to the 2023 Congressional district plan.

From my initial review of my record of communications, there are items responsive to the subpoena. However, it seems substantially possible that these materials are not relevant, or subject to privilege from production on the ground that they are part of your legislative privilege honored by the courts, including the federal courts.

The subpoena directs a response and production by April 19. Please let me know as soon as possible if you may seek to invoke the legislative privilege for any communications provided to you from Red State Strategies, or sent by you to Red State Strategies, and subject to the directions in this subpoena. Our prompt response will allow me to make proper filings to protect confidentiality and honor my duties to the court allowing issuance of the subpoena.

Yours very truly,

Chris Brown, President
Red State Strategies, LLC

CC: Albert L. Jordan, Wallace, Jordan, Ratliff and Brandt, LLC.

LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN
RSS PRESIDENT CHRIS BROWN
&
FORMER SENATOR CLAY SCOFIELD
ALABAMA SENATE DISTRICT 9

From: Chris Brown <cb@redstate-strategies.com>

Date: April 15, 2024 at 12:55:24 PM CDT

To: mnbelect@bellsouth.net

Cc: Bert Jordan <bjordan@wallacejordan.com>

Subject: Milligan Subpoena

Dear Mack:

This letter is to advise you that RedState Strategies, LLC received the attached Subpoena to Produce Documents, etc. on Friday, April 5, in the case known as *Milligan v. Allen*, No. 2:21-cv1530-AMM (N.D. Ala.). This case is known as the Congressional redistricting case, and involved review of districts drawn by the legislature in 2021, and 2023, and resulted in a "court-drawn" district map that has been used in the 2024 elections. The subpoena directs production of certain materials that may have been generated as a result of your engagement of RedState. A copy of the subpoena is attached for your reference.

The focus of the subpoena is communications related to the 2023 Congressional district plan. However, Request No. 2 does not have a limit as to time if the communications "relate to this litigation," i.e., the claims made by Milligan, or the defenses made by the State.

The subpoena also seeks Red State Strategies documents or records that may not have been delivered to you but related to the 2023 Congressional district plan.

From my initial review of my record of communications, there are items responsive to the subpoena. However, it seems substantially possible that these materials are not relevant, or subject to privilege from production on the ground that they are part of your legislative privilege honored by the courts, including the federal courts.

The subpoena directs a response and production by April 19. Please let me know as soon as possible if you may seek to invoke the legislative privilege for any communications provided to you from Red State Strategies, or sent by you to Red State Strategies, and subject to the directions in this subpoena. Our prompt response will allow me to make proper filings to protect confidentiality and honor my duties to the court allowing issuance of the subpoena.

Yours very truly,

Chris Brown, President
Red State Strategies, LLC

CC: Albert L. Jordan, Wallace, Jordan, Ratliff and Brandt, LLC.

From: [Yahoo Account Service](#)
To: [Jim Entrekin](#)
Subject: Fw: Response
Date: Thursday, April 18, 2024 1:07:55 PM

[clay_scofield@earthlink.net appears similar to someone who previously sent you email, but may not be that person. Learn why this could be a risk at <https://aka.ms/LearnAboutSenderIdentification>]

-----Forwarded Message-----

From: Yahoo Account Service <clay_scofield@earthlink.net>
Sent: Apr 16, 2024 12:52 PM
To: <cb@redstate-strategies.com>
Cc: <bjordan@wallacejordan.com>
Subject: Response

Dear Chris:

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-cv-1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them with my attorney for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thanks for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Sincerely,

**LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN
RSS PRESIDENT CHRIS BROWN
&
REPRESENTATIVE JIM CARNS
ALABAMA HOUSE DISTRICT 48**

From: Chris Brown <cb@redstate-strategies.com>
Date: April 6, 2024 at 8:42:51 PM CDT
To: Jim Carns <jwcarns@gmail.com>
Cc: Bert Jordan <bjordan@wallacejordan.com>
Subject: Milligan Subpoena

Dear Jim:

This letter is to advise you that RedState Strategies, LLC received the attached Subpoena to Produce Documents, etc. on Friday, April 5, in the case known as *Milligan v. Allen*, No. 2:21-cv-1530-AMM (N.D. Ala.). This case is known as the Congressional redistricting case and involved review of districts drawn by the legislature in 2021, and 2023, and resulted in a "court-drawn" district map that has been used in the 2024 elections. The subpoena directs production of certain materials that may have been generated as a result of your engagement of Red State Strategies. A copy of the subpoena is attached for your reference.

The focus of the subpoena is communications related to the 2023 Congressional district plan. However, Request No. 2 does not have a limit as to time if the communications "relate to this litigation," i.e., the claims made by Milligan, or the defenses made by the State.

The subpoena also seeks Red State Strategies documents or records that may not have been delivered to you but related to the 2023 Congressional district plan.

From my initial review of my record of communications, there are items responsive to the subpoena. However, it seems substantially possible that these materials are not relevant, or subject to privilege from production on the ground that they are part of your legislative privilege honored by the courts, including the federal courts.

The subpoena directs a response and production by April 19. Please let me know as soon as possible if you may seek to invoke the legislative privilege for any communications provided to you from Red State Strategies, or sent by you to Red State Strategies, and subject to the directions in this subpoena. Our prompt response will allow me to make proper filings to protect confidentiality and honor my duties to the court allowing issuance of the subpoena.

Yours very truly,

Chris Brown, President
Red State Strategies, LLC

CC: Albert L. Jordan, Wallace, Jordan, Ratliff and Brandt, LLC.

From: [Jim Carns](#)
To: [Chris Brown](#)
Cc: [Othni Latham](#); [Jim Entrekin](#)
Subject: Milligan Subpoena
Date: Thursday, April 18, 2024 1:02:50 PM

Dear Chris:

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-cv-1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them, along with our legislative legal staff, for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thanks for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Sincerely,

Representative Carns

LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN
RSS PRESIDENT CHRIS BROWN
&
REPRESENTATIVE JAMIE KIEL
ALABAMA HOUSE DISTRICT 18

From: [Jamie Kiel](#)
To: [Chris Brown](#)
Cc: [Bert Jordan](#); [Othni Lathram](#); [Jim Entrekin](#)
Subject: Re: Milligan Subpoena
Date: Monday, April 15, 2024 8:16:40 PM

Dear Chris:

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-c-v1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them, along with our legislative legal staff, for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thanks for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Sincerely,
Representative Kiel

On Apr 15, 2024, at 12:52 PM, Chris Brown <cb@redstate-strategies.com> wrote:

Dear Jamie:

This letter is to advise you that RedState Strategies, LLC received the attached Subpoena to Produce Documents, etc. on Friday, April 5, in the case known as *Milligan v. Allen*, No. 2:21-c-v1530-AMM (N.D. Ala.). This case is known as the Congressional redistricting case, and involved review of districts drawn by the legislature in 2021, and 2023, and resulted in a "court-drawn" district map that has been used in the 2024 elections. The subpoena directs production of certain materials that may have been generated as a result of your engagement of RedState. A copy of the subpoena is attached for your reference.

The focus of the subpoena is communications related to the 2023 Congressional

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district plan.

However, Request No. 2 does not have a limit as to time if the communications "relate to this litigation," i.e., the claims made by Milligan, or the defenses made by the State.

The subpoena also seeks Red State Strategies documents or records that may not have been delivered to you but related to the 2023 Congressional district plan.

From my initial review of my record of communications, there are items responsive to the subpoena. However, it seems substantially possible that these materials are not relevant, or subject to privilege from production on the ground that they are part of your legislative privilege honored by the courts, including the federal courts.

The subpoena directs a response and production by April 19. Please let me know as soon as possible if you may seek to invoke the legislative privilege for any communications provided to you from Red State Strategies, or sent by you to Red State Strategies, and subject to the directions in this subpoena. Our prompt response will allow me to make proper filings to protect confidentiality and honor my duties to the court allowing issuance of the subpoena.

Yours very truly,

Chris Brown, President
Red State Strategies, LLC

CC: Albert L. Jordan, Wallace, Jordan, Ratliff and Brandt, LLC.

<Red State Strategies Doc - Apr 5 2024.pdf>

**LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN
RSS PRESIDENT CHRIS BROWN
&
REPRESENTATIVE ARNOLD MOONEY
ALABAMA HOUSE DISTRICT 43**

From: [Arnold Mooney](#)
To: [Chris Brown](#)
Cc: [Bert Jordan](#); [Jim Entekin](#); [Othni Lathram](#)
Subject: Re: Milligan Subpoena
Date: Tuesday, April 16, 2024 8:33:32 PM
Attachments: [ATT00001.htm](#)
[Red State Strategies Doc - Apr 5 2024.pdf](#)

Dear Chris -

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-c-v1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them, along with our legislative legal staff, for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thank you for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Best regards,

Arnold

Arnold Mooney
Alabama House District 43
Chair Shelby County House Delegation
Alabama State Chair for ALEC
(205) 222-8721

On Apr 15, 2024, at 12:56 PM, Chris Brown <cb@redstate-strategies.com> wrote:

Dear Arnold:

This letter is to advise you that RedState Strategies, LLC received the attached Subpoena to Produce Documents, etc. on Friday, April 5, in the case known as *Milligan v. Allen*, No. 2:21-cv1530-AMM (N.D. Ala.). This case is known as the Congressional redistricting case and involved review of districts drawn by the legislature in 2021, and 2023, and resulted in a "court-drawn" district map that has been used in the 2024 elections. The subpoena directs production of certain materials that may have been generated as a result of your engagement of RedState. A copy of the subpoena is attached for your reference.

The focus of the subpoena is communications related to the 2023 Congressional district plan.

However, Request No. 2 does not have a limit as to time if the communications "relate to this litigation," i.e., the claims made by Milligan, or the defenses made by the State.

The subpoena also seeks Red State Strategies documents or records that may not have been delivered to you but related to the 2023 Congressional district plan.

From my initial review of my record of communications, there are items responsive to the subpoena. However, it seems substantially possible that these materials are not relevant, or subject to privilege from production on the ground that they are part of your legislative privilege honored by the courts, including the federal courts.

The subpoena directs a response and production by April 19. Please let me know as soon as possible if you may seek to invoke the legislative privilege for any communications provided to you from Red State Strategies, or sent by you to Red State Strategies, and subject to the directions in this subpoena. Our prompt response will allow me to make proper filings to protect confidentiality and honor my duties to the court allowing issuance of the subpoena.

Yours very truly,

Chris Brown, President
Red State Strategies, LLC

CC: Albert L. Jordan, Wallace, Jordan, Ratliff and Brandt, LLC.



LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN
RSS PRESIDENT CHRIS BROWN
&
REPRESENTATIVE ERNIE YARBROUGH
ALABAMA HOUSE DISTRICT 7

From: Ernie Yarbrough
To: Bert Jordan
Cc: Chris Brown; Shep Shepherd; Jim Entrekin; Othni Lathram
Subject: Re: Milligan v. Allen 21cv1530 - subpoena response - assertions of legislative privilege
Date: Monday, April 22, 2024 9:03:50 AM

Dear Chris and Bert:

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-cv1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them, along with our legislative legal staff, for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thanks for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Sincerely,

Representative Yarbrough

On Mon, Apr 15, 2024 at 4:53 PM Bert Jordan <bjordan@wallacejordan.com> wrote:

Dear Representative Yarbrough:

This follows up on the email from Chris Brown to you today.

On April 6, RedState Strategies, LLC was served with the attached subpoena seeking its communications with legislators about the 2023 Congressional redistricting arising out of the case now known as Milligan v. Allen, No. 21cv1530, and about the litigation itself. A

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response or objection to the court is required by April 19.

Some of the documents responsive to the subpoena involve communications between RedState's president Chris Brown and you. However, given your relationship with RedState, and the work its president Chris Brown does for you, those documents are likely protected from disclosure by a privilege known as "legislative privilege." I have attached a log of those documents as well as a copy of each of them.

There is an additional set of materials received by RedState from a third party and responsive to the subpoena. These materials were used in part in formulating opinions that RedState communicated to you. However, these materials themselves were not transmitted to you.

Also attached is a log of these items that would be used to assert that these items are not subject to disclosure. They are titled "Domnanovich – Privilege Log – Text Messages" and "Domnanovich – Privilege Log – Emails."

If you think you need the underlying materials, please advise.

If you wish to treat these materials as protected from disclosure by the legislative privilege, you must indicate that to the court.

However, if you want RedState to assert for you that the documents are properly exempt from disclosure due to your legislative privilege, I need you to so indicate. (If I as attorney for RedState also make the filing in your name, I will need an engagement agreement from you). If not, someone will need to assert to the privilege for you in a separate filing with the court.

It may be possible that the Legislative Services Agency will be in a position to address the subpoena in your name.

At least one other legislator who is a RedState client has LSA attorneys reviewing the RedState response, and considering how to respond for legislators.

Please advise if you wish the privilege to be asserted by RedState to be in your name.

Best regards,

Bert Jordan

LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN
RSS PRESIDENT CHRIS BROWN
&
REPRESENTATIVE MACK BUTLER
ALABAMA HOUSE DISTRICT 28

From: Chris Brown <cb@redstate-strategies.com>

Date: April 6, 2024 at 8:42:09 PM CDT

To: clay_scofield@earthlink.net

Cc: Bert Jordan <bjordan@wallacejordan.com>

Subject: Milligan Subpoena

Dear Clay:

This letter is to advise you that RedState Strategies, LLC received the attached Subpoena to Produce Documents, etc. on Friday, April 5, in the case known as *Milligan v. Allen*, No. 2:21-cv-1530-AMM (N.D. Ala.). This case is known as the Congressional redistricting case and involved review of districts drawn by the legislature in 2021, and 2023, and resulted in a "court-drawn" district map that has been used in the 2024 elections. The subpoena directs production of certain materials that may have been generated as a result of your engagement of Red State Strategies. A copy of the subpoena is attached for your reference.

The focus of the subpoena is communications related to the 2023 Congressional district plan. However, Request No. 2 does not have a limit as to time if the communications "relate to this litigation," i.e., the claims made by Milligan, or the defenses made by the State.

The subpoena also seeks Red State Strategies documents or records that may not have been delivered to you but related to the 2023 Congressional district plan.

From my initial review of my record of communications, there are items responsive to the subpoena. However, it seems substantially possible that these materials are not relevant, or subject to privilege from production on the ground that they are part of your legislative privilege honored by the courts, including the federal courts.

The subpoena directs a response and production by April 19. Please let me know as soon as possible if you may seek to invoke the legislative privilege for any communications provided to you from Red State Strategies, or sent by you to Red State Strategies, and subject to the directions in this subpoena. Our prompt response will allow me to make proper filings to protect confidentiality and honor my duties to the court allowing issuance of the subpoena.

Yours very truly,

Chris Brown, President
Red State Strategies, LLC

CC: Albert L. Jordan, Wallace, Jordan, Ratliff and Brandt, LLC.

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From: [Mack Butler](#)
To: [Chris Brown](#); [Bert Jordan](#); [Jim Entrekin](#); [Othni Lathram](#)
Subject: Legislative privilege
Date: Wednesday, April 17, 2024 12:49:24 PM

Dear Chris:

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-c-v1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them, along with our legislative legal staff, for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thanks for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Sincerely,
Representative
Mack N. Butler

LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN
RSS PRESIDENT CHRIS BROWN
&
REPRESENTATIVE RICK REHM
ALABAMA HOUSE DISTRICT 85

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From: rjr1966@aol.com
To: [Bert Jordan](#)
Cc: [Chris Brown](#); [Shep Shepherd](#); [Jim Entrekin](#); [Othni Lathram](#)
Subject: Re: Milligan v. Allen 21cv1530 - subpoena response - assertions of legislative privilege
Date: Wednesday, April 17, 2024 4:48:45 PM
Attachments: [Rehm - Privilege Log.pdf](#)
[Rehm - Text Messages.pdf](#)
[Domnanovich - Privilege Log - Text Messages.pdf](#)
[Domnanovich - Privilege Log - Emails.pdf](#)

You don't often get email from rjr1966@aol.com. [Learn why this is important](#)

Dear Chris and Bert:

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-cv1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them, along with our legislative legal staff, for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thanks for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Sincerely,

Rick Rehm
Representative
Alabama House District 85

On Wednesday, April 17, 2024 at 10:45:56 AM CDT, Bert Jordan <bjordan@wallacejordan.com> wrote:

Dear Representative Rehm:

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This follows up on the email from Chris Brown to you today.

On April 6, RedState Strategies, LLC was served with a subpoena seeking its communications with legislators about the 2023 Congressional redistricting arising out of the case now known as Milligan v. Allen, No. 21cv1530, and about the litigation itself. Chris Brown's email provided you a copy of the subpoena. A response or objection to the court was required by April 19, and has been extended by agreement to April 26.

Some of the documents responsive to the subpoena involve communications between RedState's president Chris Brown and you. However, given your relationship with RedState, and the work its president Chris Brown does for you, those documents are likely protected from disclosure by a privilege known as "legislative privilege." I have attached a log of those documents as well as a copy of each of them. There are only a few electronic communications with you.

There is an additional set of materials received by RedState from a third party and responsive to the subpoena. These materials were used in part in formulating opinions that RedState communicated to you. However, these materials themselves were not transmitted to you.

Also attached is a log of these items that would be used to assert that these items are not subject to disclosure. They are titled "Domnanovich – Privilege Log – Text Messages" and "Domnanovich – Privilege Log – Emails."

If you think you need the underlying materials, please advise.

If you wish to treat these materials as protected from disclosure by the legislative privilege, you must indicate that to the court by filing in your own name with an attorney of your choosing.

However, if you want RedState to assert for you that the documents are properly exempt from disclosure due to your legislative privilege, I need you to so indicate. (If I as attorney for RedState also make the filing in your name, I will need an engagement agreement from you). If not, someone will need to assert to the privilege for you in a separate filing with the court.

It may be possible that the Legislative Services Agency will be in a position to address the subpoena in your name.

Other legislators who are RedState clients have LSA attorneys reviewing the RedState response, and considering how to respond for legislators.

Please advise if you wish the privilege to be asserted by RedState to be in your name.

Best regards,

Bert Jordan

Attorney for RedState Strategies, LLC

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205-874-0305

205-612-1058