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STEVE LIVINGSTON
EVAN MILLIGAN, et al. vs WES ALLEN, et al.

August 09, 2023
DISTRICT COURT
N.D. OF ALABAMA
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<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 NORTHERN DISTRICT OF ALABAMA</p> <p>3 SOUTHERN DIVISION</p> <p>4</p> <p>5 NO. 2:21-CV-01530-AMM</p> <p>6</p> <p>7 EVAN MILLIGAN, et al.,</p> <p>8 Plaintiffs,</p> <p>9 Vs.</p> <p>10 WES ALLEN, et al.,</p> <p>11 Defendants.</p> <p>12</p> <p>13</p> <p>14 VIDEOTAPED REMOTE DEPOSITION OF:</p> <p>15 STEVE LIVINGSTON</p> <p>16 August 9, 2023</p> <p>17 11:43 A.M.</p> <p>18</p> <p>19</p> <p>20</p> <p>21 REPORTED BY:</p> <p>22 Cindy C. Jenkins, CCR</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 S T I P U L A T I O N S</p> <p>2 (continued)</p> <p>3</p> <p>4 IT IS FURTHER STIPULATED AND AGREED</p> <p>5 that it shall not be necessary for any</p> <p>6 objections except as to form or leading</p> <p>7 questions, and that counsel for the parties</p> <p>8 may make objections and assign grounds at the</p> <p>9 time of the trial, or at the time said</p> <p>10 deposition is offered in evidence or prior</p> <p>11 thereto.</p> <p>12</p> <p>13 IT IS FURTHER STIPULATED AND AGREED</p> <p>14 that the notice of filing of the deposition by</p> <p>15 the Commissioner is waived.</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>24</p> <p>25</p>
<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</p> <p>3 IT IS STIPULATED AND AGREED by and</p> <p>4 between the parties through their respective</p> <p>5 counsel, that the deposition of Steve</p> <p>6 Livingston may be taken before Cindy C.</p> <p>7 Jenkins, Commissioner, via Zoom Video</p> <p>8 Conference, on the 9th day of August, 2023.</p> <p>9</p> <p>10 IT IS FURTHER STIPULATED AND AGREED</p> <p>11 that the signature to and the reading of the</p> <p>12 deposition by the witness is waived, the</p> <p>13 deposition to have the same force and effect</p> <p>14 as if full compliance had been had with all</p> <p>15 laws and rules of Court relating to the taking</p> <p>16 of depositions.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</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 APPEARING ON BEHALF OF THE MILLIGAN</p> <p>4 PLAINTIFFS:</p> <p>5 NAACP LEGAL DEFENSE & EDUCATIONAL FUND</p> <p>6 Mr. Deuel Ross</p> <p>7 Mr. Tanner Lockhead</p> <p>8 700 14th Street, Northwest</p> <p>9 Suite 600</p> <p>10 Washington, DC 20005</p> <p>11 dross@naacpldf.org</p> <p>12</p> <p>13 NAACP LEGAL DEFENSE</p> <p>14 & EDUCATIONAL FUND, INC.</p> <p>15 Ms. Brittany Carter</p> <p>16 40 Rector Street, 5th Floor</p> <p>17 New York, New York 10006</p> <p>18 212-965-2200</p> <p>19 AMERICAN CIVIL LIBERTIES UNION FOUNDATION</p> <p>20 Mr. Davin M. Rosborough</p> <p>21 125 Broad Street</p> <p>22 New York, New York 10004</p> <p>23 drosborough@aclu.org</p> <p>24 APPEARING ON BEHALF OF THE CASTER PLAINTIFFS:</p> <p>25 ELIAS LAW GROUP LLP</p> <p>Mr. Joe Posimato</p> <p>250 Massachusetts Avenue, Northwest</p> <p>Suite 400</p> <p>Washington, D.C. 20001</p> <p>jposimato@elias.law</p> <p>APPEARING ON BEHALF OF THE COCHAIRS; RANDY</p> <p>HINAMAN, STEVE LIVINGSTON, and CHRIS PRINGLE:</p> <p>BALCH & BINGHAM</p> <p>Mr. Dorman Walker</p> <p>105 Tallapoosa Street</p> <p>Suite 200</p> <p>Montgomery, Alabama 36104</p> <p>dwalker@balch.com</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 APPEARANCES (continued)</p> <p>2</p> <p>3 APPEARING ON BEHALF OF THE SECRETARY OF STATE, WES ALLEN:</p> <p>4 OFFICE OF THE ATTORNEY GENERAL Mr. Jim Davis</p> <p>5 Assistant Attorney General 501 Washington Avenue 6 Montgomery, Alabama 36130 jim.davis@alabamaag.gov</p> <p>7</p> <p>8 VIDEOGRAPHER: 9 Mr. Bailey Diaz</p> <p>10</p> <p>11 ALSO PRESENT:</p> <p>12 Ms. Joelle Miller</p> <p>13 Ms. Donna Loftin</p> <p>14 Mr. Chris Pringle</p> <p>15</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>24</p> <p>25</p>	<p>1 PROCEEDINGS</p> <p>2 AUGUST 9, 2023 11:43 A.M.</p> <p>3 THE VIDEOGRAPHER: Good morning.</p> <p>4 We're now on the record. The time is now is</p> <p>5 11:43 a.m. on Wednesday, August 9th, 2023.</p> <p>6 This begins the videotaped deposition of Steve</p> <p>7 Livingston taken in the matter of Evan</p> <p>8 Milligan, et al., vs. Wes Allen, et al., the</p> <p>9 case number of which is 2:21-CV-01530-AMM.</p> <p>10 The videographer today is Bailey Diaz. Our</p> <p>11 court reporter is Cindy Jenkins, both</p> <p>12 representing Esquire Deposition Solutions.</p> <p>13 Counsel, would you please announce</p> <p>14 your name for the record and whom you</p> <p>15 represent after which the court reporter will</p> <p>16 swear in the witness.</p> <p>17 MR. ROSBOROUGH: Sure. Good</p> <p>18 morning -- good morning there. Good afternoon</p> <p>19 where I am. This is Davin Rosborough</p> <p>20 representing the Milligan plaintiffs.</p> <p>21 MR. DAVIS: Jim Davis representing</p> <p>22 the defendant, Alabama Secretary of State, Wes</p> <p>23 Allen.</p> <p>24 MR. ROSS: Deuel Ross also for the</p> <p>25 Milligan plaintiffs.</p>
<p>1 INDEX</p> <p>2 WITNESS PAGE</p> <p>3 STEVE LIVINGSTON</p> <p>4 Examination by Mr. Rosborough 9</p> <p>5</p> <p>6 INDEX OF EXHIBITS</p> <p>7 NUMBER PAGE</p> <p>8 Exhibit 1 12</p> <p>9 Exhibit 2 29</p> <p>10 Exhibit 3 37</p> <p>11 Exhibit 4 41</p> <p>12 Exhibit 5 49</p> <p>13 Exhibit 6 60</p> <p>14 Exhibit 7 63</p> <p>15 Exhibit 8 66</p> <p>16 Exhibit 9 72</p> <p>17 Exhibit 10 74</p> <p>18 Exhibit 11 79</p> <p>19 Exhibit 12 83</p> <p>20 Exhibit 13 89</p> <p>21 Exhibit 14 92</p> <p>22 Exhibit 15 100</p> <p>23 Exhibit 16 102</p> <p>24</p> <p>25</p>	<p>1 MR. WALKER: Dorman Walker</p> <p>2 representing Senator Steve Livingston.</p> <p>3 There's no one else in the room with us.</p> <p>4 MR. POSIMATO: Hi. This is Joe</p> <p>5 Posimato on behalf of the Caster plaintiffs.</p> <p>6 MR. LOCKHEAD: This is Tanner</p> <p>7 Lockhead also on behalf of the Milligan</p> <p>8 plaintiffs.</p> <p>9 MS. CARTER: This is Brittany</p> <p>10 Carter on behalf of the Milligan plaintiffs.</p> <p>11 MR. ROSBOROUGH: And, again, I'll</p> <p>12 note that Joelle Miller, who is an intern with</p> <p>13 our office is also on the line listening in.</p> <p>14 Also represent.</p> <p>15 COURT REPORTER: I'll also note</p> <p>16 that Mr. Pringle is also present; is that</p> <p>17 correct?</p> <p>18 MR. WALKER: I believe he is.</p> <p>19 COURT REPORTER: Okay. Thank you.</p> <p>20 STEVE LIVINGSTON</p> <p>21 being first duly sworn, was examined and</p> <p>22 testified as follows:</p> <p>23 MR. WALKER: Madam Court Reporter?</p> <p>24 COURT REPORTER: Yes, sir.</p> <p>25 MR. WALKER: It looks like</p>

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<p style="text-align: right;">Page 9</p> <p>1 Ms. Loftin is also present just for the 2 record. 3 COURT REPORTER: Yes, thank you. 4 I have her listed as also present. Thank you 5 so much. All set, Counsel, when you're ready 6 to go on the record. 7 EXAMINATION BY MR. ROSBOROUGH: 8 Q. Good morning, Senator Livingston, 9 how are you today? 10 A. Good morning, sir. How are you? 11 Q. Good. You understand that you're 12 testifying under oath right now; correct? 13 A. Yes, sir. 14 Q. Okay. Is there anything that 15 might prevent you from either understanding my 16 questions or answering truthfully today? 17 A. No, sir. 18 Q. Have you been deposed before? 19 A. Yes, sir. 20 Q. And when was that? 21 A. Business lawsuits in the past. 22 I don't remember the years or time frames. 23 Sorry. 24 Q. Okay. Have you ever been deposed 25 in relation to your duties as a senator?</p>	<p style="text-align: right;">Page 11</p> <p>1 discussions with your attorney, what did you 2 do to prepare for your deposition today? 3 A. We had a brief conversation this 4 morning. We had expected additional time. I 5 think it was a little time error or confusion 6 about what time we actually started this 7 morning, so... 8 Q. Okay. Did you meet with anyone 9 other than Mr. Walker in preparation for your 10 deposition? 11 A. No, sir. 12 Q. Did you discuss your testimony 13 today with anyone who was not an attorney? 14 A. No, sir. 15 Q. Okay. Did you review any 16 documents in preparation for your deposition 17 today? 18 A. Some, yes, sir. 19 Q. Do you recall which documents you 20 reviewed? 21 A. Most would have been the 22 interrogatories and the -- what's the word 23 I'm looking for? Requests for production the 24 last couple of days. 25 Q. Okay. And are you referring to</p>
<p style="text-align: right;">Page 10</p> <p>1 A. No, sir. 2 Q. Okay. I'm just going to make sure 3 we're in agreement on a few basic ground rules 4 today before we jump in. Obviously I'll be 5 asking you some questions. If you don't 6 understand a question, just let me know. If 7 I -- if you answer the question I'm going to 8 assume that you understood the question; is 9 that fair? 10 A. Yes, sir. 11 Q. Okay. And also Ms. Jenkins, the 12 court reporter, is here typing everything that 13 you and I are saying and will type anything 14 that anyone on the zoom conference says. So 15 it's important that only one person speaks at 16 a time; therefore, please allow me to finish 17 my questions and sentences even if you think 18 you anticipate what I might -- where I may be 19 going, and I will do the best -- do the best 20 to do the same with you before jumping into 21 the next question, if that sounds all right to 22 you? 23 A. Thank you. 24 Q. Okay. Okay. Senator Livingston, 25 without disclosing the content of any</p>	<p style="text-align: right;">Page 12</p> <p>1 the responses to the interrogatories that your 2 counsel produced to us on your behalf 3 yesterday? 4 A. Yes, sir. 5 Q. Okay. Did you do anything else to 6 prepare for your deposition that we haven't 7 covered? 8 A. No, sir. 9 Q. Okay. We just mentioned, I 10 believe, that you recently responded to 11 written questions known as interrogatories 12 from the plaintiffs in this case; is that 13 correct? 14 A. Yes, sir, I think so. 15 MR. ROSBOROUGH: Okay. Can we 16 please pull up Exhibit 1? 17 Q. Senator Livingston, are you able 18 to see the screen okay? 19 (Whereupon, Exhibit 1 was marked 20 for identification.) 21 THE WITNESS: Yes, sir. 22 Q. (By Mr. Rosborough) We'll just 23 sort of give you a bird's eye view. I'm not 24 going to ask you any particular question about 25 these at that time moment. But if we could</p>

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<p style="text-align: right;">Page 13</p> <p>1 just scroll down really quickly and see if you 2 can affirm that these are the interrogatory 3 responses to which you were referring? 4 A. They look so, yes. 5 Q. Okay. And is that your signature 6 on the bottom? 7 A. Yes, sir. 8 Q. Okay. And to the best of your 9 knowledge, these are still your true and 10 accurate responses? 11 A. Yes, sir. 12 MR. ROSBOROUGH: Okay. We can 13 take that down. Thank you. 14 Q. Senator, where are you from in 15 Alabama? 16 A. I reside in Scottsboro, Alabama, 17 which is the northeast corner of Alabama. 18 Q. All right. And you represent 19 Senate District 8; is that correct? 20 A. Yes, sir, I do. 21 Q. Have you lived in other parts of 22 Alabama before? 23 A. Some brief times in Huntsville, 24 Birmingham back in college days and 25 Tuscaloosa in college days.</p>	<p style="text-align: right;">Page 15</p> <p>1 I'm sorry. 2 Q. That's all right. You can only 3 testify to the best of your recollection. 4 How about this, were you a member 5 of the committee during the 2021 redistricting 6 process? 7 A. I was a member during that time 8 frame, yes, sir. 9 Q. Okay. Were you a member -- strike 10 that. We can move on from there. 11 When did you learn that you were 12 going to be appointed as cochair of the 13 committee? 14 A. Roughly the end of last year's 15 legislative session, 2022's legislative 16 session. 17 Q. Okay. Do you have any 18 understanding of why you were chosen to serve 19 as cochair? 20 A. No, sir. 21 Q. All right. I'd like to switch 22 gears and start talking about maps. That's 23 why we're here after all. 24 At what point after the Supreme -- 25 well, let me step back. If I refer to the</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. Okay. Have you ever lived in the 2 Gulf Coast area? 3 A. No, sir, I have not. 4 Q. Okay. Have you ever lived in the 5 area you consider as being part of the Black 6 Belt of Alabama? 7 A. No, sir. 8 Q. Okay. Senator, when approximately 9 were you appointed as cochair of the joint 10 reapportionment committee? 11 A. I don't remember the date. It 12 would have been last year at the end of the 13 legislative session approximately. 14 Q. Okay. Just for our -- purposes of 15 brevity and mutual understanding, if I refer 16 to the committee, will you understand that 17 to -- me to be referring to the joint 18 reapportionment committee? 19 A. Yes, sir. 20 Q. Okay. Before your appointment as 21 cochair, did you serve on the committee? 22 A. I did, yes, sir. 23 Q. When were you initially appointed 24 to the committee? 25 A. I honestly don't remember, sir.</p>	<p style="text-align: right;">Page 16</p> <p>1 Supreme Court's decision generally, will you 2 understand me to be referring to the decision 3 in this case, the Allen v. Milligan case? 4 A. Yes, sir. 5 Q. Okay. So at what point did you 6 begin your work as cochair as -- looking at 7 the possibility of a new congressional 8 districting map after the Supreme Court's 9 decision? 10 A. I would assume it would have 11 been the week following the Court decision 12 that the chairs got together with the 13 attorneys and discussed what -- some decision 14 of a plan and how we needed to be prepared 15 going forward. 16 Q. Okay. And without asking you to 17 discuss the content of the conversation with 18 the attorneys, what attorneys are you 19 referring to? 20 A. It would have been -- Dorman 21 Walker would have been the attorney. That 22 would have been the only one present at that 23 meeting. 24 Q. Okay. After that initial meeting, 25 what were your next steps as -- in your role</p>

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<p style="text-align: right;">Page 17</p> <p>1 as cochair?</p> <p>2 A. We established a meeting of the</p> <p>3 cochairs, the attorney, I think Mr. Hinaman</p> <p>4 was in that room the next time. And then</p> <p>5 from there, we established the steps of</p> <p>6 moving forward until we knew what the dates</p> <p>7 were that we were given by the -- by the</p> <p>8 governor for the special session.</p> <p>9 Q. Okay. And when you say "we," who</p> <p>10 specifically are you referring to?</p> <p>11 A. So that would have Chairman</p> <p>12 Pringle, Dorman, and then probably Randy --</p> <p>13 Mr. Hinaman would have been at one of these</p> <p>14 meetings. Other than that -- it would have</p> <p>15 been that. And likely Donna Loftin would</p> <p>16 have been there also as supervisor of the</p> <p>17 reapportionment office.</p> <p>18 Q. Okay. Did you consult with anyone</p> <p>19 else about the process at that point who was</p> <p>20 not in the meeting?</p> <p>21 A. I'm sorry. You dropped a little</p> <p>22 bit. Can you repeat that?</p> <p>23 Q. Oh, I'm sorry. Sure. Sure.</p> <p>24 Other than the people who were in</p> <p>25 the meeting, do you recall consulting with</p>	<p style="text-align: right;">Page 19</p> <p>1 we were going to have as we moved in towards</p> <p>2 the special session date.</p> <p>3 Q. Do you recall from the meeting</p> <p>4 that you had with representative</p> <p>5 Representative Pringle and Mr. Walker and</p> <p>6 Mr. Hinaman if anyone gave Mr. Hinaman a</p> <p>7 charge leaving the meeting in terms of</p> <p>8 starting work on a new map?</p> <p>9 A. I don't remember exactly, no,</p> <p>10 sir.</p> <p>11 Q. Okay. Do you recall how the map</p> <p>12 drawing process itself got started?</p> <p>13 A. I do not, sir. I'm sorry.</p> <p>14 Q. Okay. Tell me about the first</p> <p>15 meeting that the full reconstituted</p> <p>16 reapportionment committee had to the best of</p> <p>17 your recollection.</p> <p>18 A. The meeting was called to order.</p> <p>19 We had to elect -- reelect cochairs, which</p> <p>20 Representative Pringle was elected, and I was</p> <p>21 elected as cochairs from that full</p> <p>22 membership. We had conversation about the,</p> <p>23 again, the public hearings that we wanted to</p> <p>24 have, the process of submitting maps to the</p> <p>25 reapportionment office so they could be</p>
<p style="text-align: right;">Page 18</p> <p>1 anyone else about the process moving forward?</p> <p>2 A. No, sir.</p> <p>3 Q. All right. What were your next</p> <p>4 steps in the process of looking at new maps</p> <p>5 after that -- after that meeting with you and</p> <p>6 Mr. Walker and Representative Pringle and</p> <p>7 Mr. Hinaman?</p> <p>8 A. I'm not sure I can recall that</p> <p>9 to be honest with you. It was a pressed time</p> <p>10 frame, and I just don't recall. I'm sorry.</p> <p>11 Q. From that first meeting, were</p> <p>12 there any specific next steps set out for any</p> <p>13 of the participants?</p> <p>14 A. So the legislature had gone down</p> <p>15 to a -- a term committee, which you remember</p> <p>16 would have been three members of the senate</p> <p>17 and then three members of the house with</p> <p>18 Chairman Pringle and I being cochair. I</p> <p>19 think we had a meeting of that and asked</p> <p>20 the -- it would have been the lieutenant</p> <p>21 governor and the speaker of the house to</p> <p>22 recreate the full standing committee back to</p> <p>23 the membership. And then we would have a</p> <p>24 meeting of that membership and discussed the</p> <p>25 guidelines there and the public hearings that</p>	<p style="text-align: right;">Page 20</p> <p>1 populated, the last date of what they could</p> <p>2 be submitted. I think it was a week or ten</p> <p>3 days prior, is that correct, Dorman? I</p> <p>4 forgotten. So a week or ten days prior to</p> <p>5 the start of the legislative session so they</p> <p>6 could be populated on the computer.</p> <p>7 Q. Okay. Did you discuss in</p> <p>8 enactment of redistricting guidelines at that</p> <p>9 meeting?</p> <p>10 A. Yes, we did. Yes, sir.</p> <p>11 Q. And what do you recall about that</p> <p>12 discussion?</p> <p>13 A. There was some conversation</p> <p>14 about whether they needed to changed or not.</p> <p>15 Ultimately the committee voted not to change</p> <p>16 them.</p> <p>17 Q. Okay. And what was your view in</p> <p>18 that regard as to whether or not the</p> <p>19 guidelines needed to be changed from the 2021</p> <p>20 guidelines?</p> <p>21 A. My view?</p> <p>22 Q. Yes, sir.</p> <p>23 A. I guess my view is a committee's</p> <p>24 view because they elected not to change them.</p> <p>25 Q. Okay. Did you have -- did you</p>

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<p style="text-align: right;">Page 21</p> <p>1 have another view other than the committee 2 view at that time? 3 A. No, sir. 4 Q. All right. At that point in 5 time -- well, let me step back. 6 How did Mr. Hinaman come to be 7 involved in the map drawing process? 8 A. He has been the demographer 9 for -- or I guess that's the terminology -- 10 for the state for some time and was brought 11 in to -- to help us with the maps as we moved 12 forward. 13 Q. At the point before any public 14 hearings started, was there anyone else 15 besides Mr. Hinaman brought in to help either 16 draw or evaluate maps? 17 A. Not that I'm aware of. 18 Q. Okay. When did -- let me ask. 19 Are you familiar with Dr. M.V. Hood, III, 20 better known as Trey Hood from the University 21 of Georgia? 22 A. Just that I understood he 23 provided performance analysis for us. 24 Q. Do you have an understanding of 25 when he became involved in the process?</p>	<p style="text-align: right;">Page 23</p> <p>1 A. I did not individually. I think 2 the committee may have offered some 3 guidelines or some guidance to him as maps 4 were being submitted. 5 Q. And do you recall what guidelines 6 or guidance were given to Mr. Hinaman at that 7 time? 8 A. I think they asked him to abide 9 by the guidelines that were adopted by the 10 committee and move forward from there. 11 Q. Okay. Do you recall if any 12 instructions were given to Mr. Hinaman in 13 regards to the -- either the District Court or 14 the Supreme Court's order in this case? 15 A. I think the word "opportunity" 16 was mentioned, yes. 17 Q. Okay. What do you recall about 18 the -- what was said to Mr. Hinaman regarding 19 the word opportunity? 20 A. I think that the -- it was 21 expressed to him that the Court's ordered us 22 to look at an opportunity district -- 23 districts. 24 Q. Okay. And at that point in time, 25 what was your understanding of what that</p>
<p style="text-align: right;">Page 22</p> <p>1 A. No, sir, I really don't know 2 when he got involved in the process. 3 Q. Do you recall a point in time when 4 any instructions were given to Mr. Hinaman to 5 start working on a map or maps? 6 A. I do not specifically, no, sir. 7 Q. Do you recall, putting aside any 8 particular time frame, any particular 9 instructions that were given to Mr. Hinaman 10 about drawing a new map? 11 A. I do not personally, no, sir. 12 Q. Okay. Were you involved in any 13 conversations with Mr. Hinaman about the 14 drawing of a new map or maps? 15 A. There was a lot of conversation 16 about a lot of different maps. And just to 17 be fair, they all kind of run together until 18 you sit down and look at them individually. 19 Q. Okay. And we will definitely do 20 that. Broadly, at this point in time, 21 before -- before the public hearings, do you 22 recall providing any input to Mr. Hinaman 23 about what you wanted to see in a map? 24 A. Individually or as a committee? 25 Q. Let's start with individually.</p>	<p style="text-align: right;">Page 24</p> <p>1 meant? 2 A. That's very vague. 3 Q. Okay. At this point in time, do 4 you have an understanding of what that term 5 means? 6 A. It's still very vague. 7 Q. All right. Despite the vagueness, 8 how -- what is -- even if vague, what is your 9 understanding of what the term "opportunity 10 district" means in this context? 11 A. Would you repeat that for me, 12 please? 13 Q. Sure. Sure. 14 Even if vague or uncertain, what 15 is your understanding of that term opportunity 16 district means this context? 17 A. As I understand it, the Courts 18 have ordered us to provide two opportunity 19 districts, minority -- majority minority 20 opportunity districts. 21 Q. And what is your sense of what it 22 means to provide two minority opportunity 23 districts? 24 A. Again, that's very vague. And I 25 think it's to a matter of interpretation.</p>

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<p style="text-align: right;">Page 25</p> <p>1 Q. Do you have an interpretation?</p> <p>2 A. I do not, sir.</p> <p>3 Q. And let me go back. Okay.</p> <p>4 Do you -- without revealing any</p> <p>5 conversations with counsel, do you -- did you</p> <p>6 hear from others as to -- who were involved</p> <p>7 with the process as to where their conception</p> <p>8 of having two minority opportunity districts</p> <p>9 are?</p> <p>10 A. Are you in reference to</p> <p>11 committee members, sir, or outsiders or --</p> <p>12 Q. Let's start with committee</p> <p>13 members. That would be great.</p> <p>14 A. Our committee members expressed</p> <p>15 some interest and some, I think, again, they</p> <p>16 were very vague at the definition of what it</p> <p>17 was while our minority members were pretty</p> <p>18 specific about they thought it meant that we</p> <p>19 had to draw two majority minority districts,</p> <p>20 not opportunity districts.</p> <p>21 Q. Okay. Under your conception of</p> <p>22 opportunity districts, would having a second</p> <p>23 district where African American voters would</p> <p>24 not have won across a series of previous</p> <p>25 statewide elections qualify as an opportunity</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. Okay. If there's a history of</p> <p>2 African American preferred congressional</p> <p>3 candidates not being well-funded, does that --</p> <p>4 did that factor into your decision at all?</p> <p>5 MR. WALKER: Objection to form.</p> <p>6 If you understand the question, you may answer</p> <p>7 it.</p> <p>8 THE WITNESS: I don't understand</p> <p>9 the question, so...</p> <p>10 Q. (By Mr. Rosborough) Let me</p> <p>11 actually ask something a little different. I</p> <p>12 think that wasn't a great question. Where did</p> <p>13 your belief come from that an opportunity</p> <p>14 district meant even if African American</p> <p>15 preferred candidates would have lost in all of</p> <p>16 the previous reconstituted race, if analyzed,</p> <p>17 if -- it was nonetheless an opportunity</p> <p>18 district if a black preferred candidate was</p> <p>19 well-funded and well-known? Where did that</p> <p>20 belief stem from?</p> <p>21 A. I'm going to tell you this came</p> <p>22 from back home. I live in a community of</p> <p>23 about 15,000 people with the African American</p> <p>24 population of less than 5 percent. And our</p> <p>25 election cycle there in the city, we -- we</p>
<p style="text-align: right;">Page 26</p> <p>1 district?</p> <p>2 A. Could I ask you to repeat that</p> <p>3 for me?</p> <p>4 Q. Sure. Let's say that there is</p> <p>5 analysis where the second district, which is</p> <p>6 supposed to be a minority opportunity</p> <p>7 district, that that -- that that is</p> <p>8 reconfigured to run past election results and</p> <p>9 those results show that in all, let's say,</p> <p>10 seven of the elections run, minority or</p> <p>11 African American particularly preferred</p> <p>12 candidates would have lost. Does that, in</p> <p>13 your definition, qualify as an opportunity</p> <p>14 district?</p> <p>15 A. If there were high enough</p> <p>16 percentages -- if they had been well-funded</p> <p>17 and a well-known candidate, in some</p> <p>18 instances, yes.</p> <p>19 Q. Is there a particular threshold</p> <p>20 for how close prior races would need to be</p> <p>21 such that you believed a well-funded and</p> <p>22 well-known candidate preferred by African</p> <p>23 American voters might make that a race that</p> <p>24 they could win?</p> <p>25 A. I do not have a number, no, sir.</p>	<p style="text-align: right;">Page 28</p> <p>1 had an African American female beat a sitting</p> <p>2 city council president handily, and we had an</p> <p>3 African American male beat a sitting school</p> <p>4 board candidate, not so handily, by one vote.</p> <p>5 I think it's about the person and the</p> <p>6 candidate.</p> <p>7 Q. Okay. And with these two African</p> <p>8 American candidates, do you have any idea</p> <p>9 whether those candidates were preferred by a</p> <p>10 majority of African American voters in the</p> <p>11 area?</p> <p>12 A. I think so and probably by white</p> <p>13 voters also.</p> <p>14 Q. Okay. And what's your basis of</p> <p>15 belief that these two African American</p> <p>16 candidates were also the candidates who were</p> <p>17 preferred by African American voters?</p> <p>18 A. Because they won pretty handily</p> <p>19 in a relatively small minority district, less</p> <p>20 than 5 percent.</p> <p>21 Q. Okay. Do you have any other basis</p> <p>22 for your belief about an opportunity district</p> <p>23 being one in which it would require an African</p> <p>24 American preferred candidate to be well-funded</p> <p>25 and well-known, any other sources for that</p>

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<p style="text-align: right;">Page 29</p> <p>1 belief?</p> <p>2 A. No, sir.</p> <p>3 MR. ROSBOROUGH: Okay. Can we</p> <p>4 pull up what we've marked as Exhibit No. 2,</p> <p>5 please.</p> <p>6 (Whereupon, Exhibit 2 was marked</p> <p>7 for identification.)</p> <p>8 MR. ROSBOROUGH: Yeah, if we</p> <p>9 can enlarge that a little maybe, the text.</p> <p>10 There we go. Perfect. Thank you.</p> <p>11 Q. Feel free to take a minute to look</p> <p>12 at that Senator Livingston. But once you've</p> <p>13 had chance to look at that, can you let me</p> <p>14 know if you recognize this what appears to be</p> <p>15 e-mail?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. And what is this e-mail?</p> <p>18 A. I think that was actually a text</p> <p>19 message that came to me from State Party</p> <p>20 Chairman *John Waugh asking me to have a</p> <p>21 meeting with -- what's his name? Having a</p> <p>22 phone call, not a meeting, Dale Oldham is</p> <p>23 what that came from.</p> <p>24 Q. Okay. Do you remember when you</p> <p>25 got this message?</p>	<p style="text-align: right;">Page 31</p> <p>1 whether Mr. Oldham played any role in this</p> <p>2 redistricting process?</p> <p>3 A. No, sir, I am not.</p> <p>4 MR. ROSBOROUGH: Okay. We can</p> <p>5 take that down.</p> <p>6 Q. Before we move on, I want to</p> <p>7 ask -- come back and ask a couple of questions</p> <p>8 about the two races that you referred to where</p> <p>9 you said there had been two African American</p> <p>10 candidates who had won local races. What</p> <p>11 specific races are you referring to, Senator</p> <p>12 Livingston, just so the record is clear?</p> <p>13 A. City council race and a city</p> <p>14 school board race.</p> <p>15 Q. And this is in Scottsboro?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. And do you know if any</p> <p>18 statistical analysis of racially polarized</p> <p>19 voting or otherwise were performed to</p> <p>20 determine candidate of choice by race in</p> <p>21 either of those races?</p> <p>22 A. No, sir.</p> <p>23 Q. Okay. I'm sorry. Do you recall</p> <p>24 the names of those candidates who won?</p> <p>25 A. The candidates?</p>
<p style="text-align: right;">Page 30</p> <p>1 A. No, sir, I do not. It's been a</p> <p>2 few weeks ago.</p> <p>3 Q. Okay. Did you end up -- well, to</p> <p>4 the best of your understanding was Mr. Oldham</p> <p>5 retained as counsel to -- well, let me back</p> <p>6 up. To the best of your knowledge, is</p> <p>7 Mr. Oldham one of your counsel?</p> <p>8 A. No, sir.</p> <p>9 Q. Okay. Did you ever have a</p> <p>10 conversation with Mr. Oldham?</p> <p>11 A. No, sir, I did not.</p> <p>12 Q. And why not?</p> <p>13 MR. WALKER: I'm going to assert</p> <p>14 privilege here and instruct the witness not to</p> <p>15 answer to the extent that his response would</p> <p>16 include any advice that I gave him.</p> <p>17 Q. (By Mr. Rosborough) Okay.</p> <p>18 Let me revise that question then.</p> <p>19 So without revealing any conversations you had</p> <p>20 with Mr. Walker, are you able to say outside</p> <p>21 of any conversations why you chose not to meet</p> <p>22 with Mr. Oldham?</p> <p>23 A. I was advised by counsel not to</p> <p>24 meet with him.</p> <p>25 Q. Okay. And are you aware of</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Yes. Yes, sir.</p> <p>2 A. The city council was Nita</p> <p>3 Tolliver.</p> <p>4 Q. Okay.</p> <p>5 A. And the school board was Gary</p> <p>6 Speers, Dr. Gary Speers.</p> <p>7 Q. And do you know if these were</p> <p>8 partisan or nonpartisan races?</p> <p>9 A. Nonpartisan races.</p> <p>10 Q. Nonpartisan. Okay.</p> <p>11 And do you know the race of the --</p> <p>12 of their opponents?</p> <p>13 A. The two opponents?</p> <p>14 Q. Yes, sir.</p> <p>15 A. They were both white. They were</p> <p>16 both white; one male, one female.</p> <p>17 Q. Okay.</p> <p>18 A. The black female beat a white</p> <p>19 male and the black male beat a white female.</p> <p>20 Q. Okay. I'd like to switch gears</p> <p>21 and talk about the July 13th, 2023 committee</p> <p>22 meeting and public hearing. Just to help</p> <p>23 refresh your memory, this was the Thursday</p> <p>24 before the special session started. Do you</p> <p>25 recall that meeting generally?</p>

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<p style="text-align: right;">Page 33</p> <p>1 A. I recall it, yes, sir.</p> <p>2 Q. Okay. At that point during that</p> <p>3 meeting, the only maps that had been</p> <p>4 introduced publicly were maps that were</p> <p>5 submitted by members of the public and the</p> <p>6 plaintiffs in various cases. Is that your</p> <p>7 understanding?</p> <p>8 A. I don't recall, but likely, yes.</p> <p>9 Q. Okay. What was the status of the</p> <p>10 committee majorities map drawing efforts at</p> <p>11 that point in time?</p> <p>12 A. The committee majority?</p> <p>13 Q. Well, let's take a step back. At</p> <p>14 the point of that Thursday meeting, what was</p> <p>15 your involvement in any maps that were being</p> <p>16 drafted, whether or not they were finished?</p> <p>17 A. I don't think there were any</p> <p>18 maps finished on that Thursday. I think we</p> <p>19 were waiting to take public input before we</p> <p>20 came through with a map and brought it</p> <p>21 forward.</p> <p>22 Q. Was Mr. Hinaman working on drafts</p> <p>23 of maps at that point?</p> <p>24 A. I don't remember if Mr. Hinaman</p> <p>25 was there on that Thursday or not to be</p>	<p style="text-align: right;">Page 35</p> <p>1 at all, did Mr. Hinaman take account of public</p> <p>2 input that was received during those hearings?</p> <p>3 A. I can't answer that question.</p> <p>4 Q. How, if at all, did you take</p> <p>5 account for input received during those two</p> <p>6 public hearings?</p> <p>7 A. We had a court reporter -- a</p> <p>8 reporter there that was online taking all of</p> <p>9 the information down and providing that and</p> <p>10 provided it to the committee. It was taken.</p> <p>11 And we had conversations about it and --</p> <p>12 afterwards, but it was somewhat brief.</p> <p>13 Q. Okay. What do you recall about</p> <p>14 the conversation, the brief conversation you</p> <p>15 mentioned afterwards about the testimony?</p> <p>16 A. I think that was about the same</p> <p>17 time frame we had the large number of maps</p> <p>18 that had been submitted online because</p> <p>19 Thursday was the deadline -- I believe that</p> <p>20 Thursday was the deadline. I believe that's</p> <p>21 right. But we had had a large number of maps</p> <p>22 submitted online by any number of folks,</p> <p>23 including some from Paris, France. So I</p> <p>24 don't remember the conversation, I apologize.</p> <p>25 Q. That's all right.</p>
<p style="text-align: right;">Page 34</p> <p>1 honest.</p> <p>2 Q. Do you recall if anyone else --</p> <p>3 I'm sorry. Go ahead and finish.</p> <p>4 A. I don't -- I just don't recall</p> <p>5 if he was -- if he was in Montgomery on that</p> <p>6 date, I'm sorry.</p> <p>7 Q. That's all right.</p> <p>8 Are you aware of whether</p> <p>9 Mr. Hinaman was working on maps at that point</p> <p>10 in time, whether or not he was in Montgomery?</p> <p>11 A. I don't know whether he was in</p> <p>12 Montgomery or not. But I feel sure that he</p> <p>13 was trying to work on some maps, yes.</p> <p>14 Q. Okay. And at that point in time,</p> <p>15 do you know of any specific guidance he had</p> <p>16 been given on the maps he was drawing?</p> <p>17 A. The guidance he had given were</p> <p>18 the guidelines that we had adopted at the</p> <p>19 committee.</p> <p>20 Q. Okay. The Thursday, July 13th</p> <p>21 hearing was the second public hearing that had</p> <p>22 occurred; is that correct?</p> <p>23 A. I believe that's correct, yes,</p> <p>24 sir.</p> <p>25 Q. Okay. After that hearing, how, if</p>	<p style="text-align: right;">Page 36</p> <p>1 Did public input you received at</p> <p>2 either of those hearings change any of the</p> <p>3 guidance that were given to either Mr. Hinaman</p> <p>4 or anyone else working on a map?</p> <p>5 A. I don't think so, no, sir.</p> <p>6 Q. Do you recall at the beginning of</p> <p>7 the public portion of that hearing several</p> <p>8 individuals were called up to speak about</p> <p>9 communities of interest?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And I think I'm speaking</p> <p>12 specifically, I believe the first few were</p> <p>13 Mike Schmitz, who is the former mayor of</p> <p>14 Dothan, and Jeff Brannon, the CEO of Flowers</p> <p>15 Hospital. Do you recall that?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Did you have a role in calling</p> <p>18 those witnesses to come testify at the public</p> <p>19 hearing?</p> <p>20 A. I did not. I was told by a</p> <p>21 committee member that he wanted to have them</p> <p>22 come to testify, that they thought the</p> <p>23 Wiregrass was significant as a community of</p> <p>24 interest.</p> <p>25 Q. Okay.</p>

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<p style="text-align: right;">Page 37</p> <p>1 MR. ROSBOROUGH: Can we pull up</p> <p>2 exhibit No. 3, please?</p> <p>3 (Whereupon, Exhibit 3 was marked</p> <p>4 for identification.)</p> <p>5 Q. (By Mr. Rosborough) Is this a text</p> <p>6 message you received, Senator Livingston?</p> <p>7 A. Yes, sir, it is.</p> <p>8 Q. And who is that text message from?</p> <p>9 A. That's from committee member</p> <p>10 Senator Chasteen.</p> <p>11 Q. Okay. Was Senator Chasteen the</p> <p>12 one who asked for Mr. Schmitz and Mr. Brannon</p> <p>13 to be called as witnesses?</p> <p>14 MR. WALKER: I'm going to assert</p> <p>15 legislative privilege and immunity here.</p> <p>16 Apparently this was an inadvertent disclosure</p> <p>17 of a communication from Senator Chasteen which</p> <p>18 we would ask to be returned. And I will</p> <p>19 instruct the witness not the answer any</p> <p>20 questions about what Senator Chasteen told</p> <p>21 him.</p> <p>22 MR. ROSBOROUGH: Okay. We can</p> <p>23 pull that down for the moment then. Thank</p> <p>24 you.</p> <p>25 MR. WALKER: Thank you.</p>	<p style="text-align: right;">Page 39</p> <p>1 come and testify at the hearing?</p> <p>2 A. No, sir.</p> <p>3 Q. Are you aware of whether Cochair</p> <p>4 Pringle had any role in having any specific</p> <p>5 witnesses come and testify at that hearing?</p> <p>6 A. I am not, sir.</p> <p>7 Q. Okay. Let's move on and talk a</p> <p>8 little bit about the committee guidelines I</p> <p>9 think you referenced. Am I correct that at</p> <p>10 the July 13th committee meeting that we've</p> <p>11 been speaking about, the committee voted to</p> <p>12 readopt the 2021 legislative redistricting</p> <p>13 guidelines?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. Was there any prior</p> <p>16 discussion that you were involved in whether</p> <p>17 to readopt those guidelines or change the</p> <p>18 guidelines?</p> <p>19 A. No, sir.</p> <p>20 Q. Why did you choose to readopt the</p> <p>21 prior guidelines personally?</p> <p>22 A. They seemed to serve us well. I</p> <p>23 don't remember the conversation around it to</p> <p>24 be honest. So...</p> <p>25 Q. Okay. Do you recall that, I</p>
<p style="text-align: right;">Page 38</p> <p>1 MR. ROSBOROUGH: And obviously</p> <p>2 we'll reserve our rights to challenge that</p> <p>3 assertion of privilege. But we can -- we can</p> <p>4 move past that for the moment.</p> <p>5 MR. WALKER: Certainly.</p> <p>6 MR. ROSBOROUGH: Okay.</p> <p>7 Q. Senator Livingston, separate and</p> <p>8 apart from any conversation you had with</p> <p>9 Senator Chasteen, did you have any other</p> <p>10 understanding of why Mr. Schmitz and</p> <p>11 Mr. Brannon appeared to testify first and</p> <p>12 second at the hearing?</p> <p>13 A. Would you repeat that for me,</p> <p>14 please?</p> <p>15 Q. Sure. Separate and apart -- I'm</p> <p>16 not asking you about you any conversations you</p> <p>17 had Senator Chasteen. Separate and apart from</p> <p>18 those, do you have any understanding of why</p> <p>19 Mr. Schmitz and Mr. Brannon were called as</p> <p>20 witnesses to testify first and second at that</p> <p>21 hearing?</p> <p>22 A. I do not, sir, I'm sorry.</p> <p>23 Q. Separate and apart from</p> <p>24 Mr. Schmitz and Mr. Brannon, did you have any</p> <p>25 role in asking any other specific witnesses to</p>	<p style="text-align: right;">Page 40</p> <p>1 believe it was Representative England, offered</p> <p>2 an amendment to the guidelines at that</p> <p>3 meeting?</p> <p>4 A. Yes, sir, he did.</p> <p>5 Q. Okay. And does it sound correct</p> <p>6 that the guidelines -- the amendment that he</p> <p>7 offered specifically concerned instructions</p> <p>8 about compliance with the Court's order and</p> <p>9 Voting Rights Act?</p> <p>10 A. I don't remember what it</p> <p>11 contained, no, sir I'm sorry.</p> <p>12 Q. Okay.</p> <p>13 Did you vote against</p> <p>14 Representative England's amendment?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Why did you choose to vote against</p> <p>17 that amendment?</p> <p>18 A. It didn't feel like it was</p> <p>19 necessary.</p> <p>20 Q. And why was that?</p> <p>21 A. We felt like the guidelines were</p> <p>22 accurate as they were.</p> <p>23 MR. ROSBOROUGH: Let's pull up</p> <p>24 Exhibit 4, please.</p> <p>25 (Whereupon, Exhibit 4 was marked</p>

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<p style="text-align: right;">Page 41</p> <p>1 for identification.)</p> <p>2 MR. ROSBOROUGH: Tanner, if you</p> <p>3 could slowly scroll down there.</p> <p>4 Q. (By Mr. Rosborough) So</p> <p>5 Representative -- I'm sorry, Senator</p> <p>6 Livingston, do those appear to be the 2021</p> <p>7 guidelines which the committee reenacted as</p> <p>8 guidelines for the 2023 process?</p> <p>9 A. It looks like that, yes, sir.</p> <p>10 Q. Okay.</p> <p>11 MR. ROSBOROUGH: Let's scroll down</p> <p>12 to page 3 of the guidelines if we can.</p> <p>13 Q. Okay. And can you see, Senator</p> <p>14 Livingston, the guideline on the -- toward the</p> <p>15 top half of the page that's marked with small</p> <p>16 Roman numeral 6 above G.</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. And just so it's clear,</p> <p>19 that -- that guideline reads, In establishing</p> <p>20 legislative districts, the reapportionment</p> <p>21 committee shall give due consideration to all</p> <p>22 the criteria herein. However, priority is to</p> <p>23 be given to the compelling state interest</p> <p>24 requiring equality of population among</p> <p>25 districts and compliance with the Voting</p>	<p style="text-align: right;">Page 43</p> <p>1 provision suggests those as the three most</p> <p>2 important factors to you?</p> <p>3 A. I'm missing your question. I'm</p> <p>4 sorry.</p> <p>5 Q. Sure. Well, you referred to --</p> <p>6 you referred to three factors that I think you</p> <p>7 just confirmed, which were not pairing</p> <p>8 incumbents, communities of interest, and</p> <p>9 compactness. But I don't see any of those</p> <p>10 words in that paragraph. So my question to</p> <p>11 you is: What about that paragraph conveyed to</p> <p>12 you that those three considerations were the</p> <p>13 most important considerations?</p> <p>14 A. I'm still not following your</p> <p>15 question. My apologies.</p> <p>16 Q. Sure.</p> <p>17 Well, that paragraph that we just</p> <p>18 read states in part that priority is to be</p> <p>19 given to requiring equality of population and</p> <p>20 compliance with the Voting Rights Act should</p> <p>21 those requirements conflict with any other</p> <p>22 criteria. Am I correct in generally</p> <p>23 summarizing that paragraph?</p> <p>24 A. Okay. Yes, sir.</p> <p>25 Q. Okay. But then you referenced to</p>
<p style="text-align: right;">Page 42</p> <p>1 Rights Act of 1965 as amended should the</p> <p>2 requirements of those criteria conflict with</p> <p>3 any other criteria. Did I read that</p> <p>4 correctly?</p> <p>5 A. Yes, sir.</p> <p>6 Q. What is your understanding of that</p> <p>7 provision in the legislative guidelines?</p> <p>8 A. That we paid attention to</p> <p>9 compactness, communities of interest, not</p> <p>10 having candidates to challenge themselves --</p> <p>11 or challenge each other, as the case may be.</p> <p>12 Q. Okay. And what about that</p> <p>13 paragraph references to you communities of</p> <p>14 interest, compactness, and avoid pairing of</p> <p>15 incumbents?</p> <p>16 A. Would you repeat that again?</p> <p>17 Q. Sure. I believe that you said</p> <p>18 that -- and please correct me if I'm wrong --</p> <p>19 that you understood that paragraph to refer to</p> <p>20 the importance of compactness, respect for</p> <p>21 communities of interest, and not pairing</p> <p>22 incumbents. Did I get your prior statement</p> <p>23 correct there?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. So what about this</p>	<p style="text-align: right;">Page 44</p> <p>1 me several other criteria, I believe;</p> <p>2 communities of interest, compactness, and not</p> <p>3 pairing incumbents. And so I'm wondering -- I</p> <p>4 don't see those factors mentioned in that</p> <p>5 paragraph. So what about population equality</p> <p>6 and compliance with the Voting Rights Act to</p> <p>7 you suggest that compliance with those three</p> <p>8 factors you mentioned are most important?</p> <p>9 A. I'm not sure I know how to</p> <p>10 answer that question, sir. I'm sorry.</p> <p>11 Obviously, we were -- deviation was plus or</p> <p>12 minus one on the plans we had. The Voting</p> <p>13 Rights Act, I think it deals --</p> <p>14 Q. And I'm sorry.</p> <p>15 A. I'm not sure I know how to</p> <p>16 answer that.</p> <p>17 Q. Well, without revealing any</p> <p>18 conversations you had with counsel, how did</p> <p>19 you understand compliance with the voting</p> <p>20 rights of 1965 -- with the Voting Rights Act</p> <p>21 of 1965 in the context of --</p> <p>22 A. I haven't had that communication</p> <p>23 with counsel.</p> <p>24 Q. Okay. I just want to make sure I</p> <p>25 understand because I'm just -- I'm just</p>

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<p style="text-align: right;">Page 45</p> <p>1 following up here because I was a little --</p> <p>2 I'm a little confused by your answer.</p> <p>3 In referencing population equality</p> <p>4 and compliance with the Voting Rights Act,</p> <p>5 you -- you know, and I asked you about how you</p> <p>6 understood those -- how you understood this</p> <p>7 passage, which said that those two factors</p> <p>8 should take precedence if they conflict with</p> <p>9 any other criteria. In response, you</p> <p>10 mentioned communities of interest,</p> <p>11 compactness, and not pairing incumbents.</p> <p>12 And so what I'm trying to ask you</p> <p>13 is: I'm not seeing the link between that</p> <p>14 paragraph and those three factors. And --</p> <p>15 which you obviously believe is there, which is</p> <p>16 fine. But I'm just trying to understand why</p> <p>17 you believe there's a link between population</p> <p>18 equality and Voting Rights Act compliance and</p> <p>19 the factors of communities of interest, not</p> <p>20 pairing incumbents, and compactness.</p> <p>21 A. Well, the three things that were</p> <p>22 mentioned were part of our plan or the</p> <p>23 guidelines in addition to that. And I think</p> <p>24 that says -- excuse me, compelling state</p> <p>25 interest. So...</p>	<p style="text-align: right;">Page 47</p> <p>1 question because I don't mean to keep us on</p> <p>2 this particular topic forever, and I do want</p> <p>3 to talk about some of the plans in particular.</p> <p>4 Is it your understanding that by</p> <p>5 drawing a map that does not pair incumbents,</p> <p>6 complies with communities of interest, and is</p> <p>7 reasonably compact, that you are complying</p> <p>8 with the Voting Rights Act?</p> <p>9 A. We thought the plans that we did</p> <p>10 put together using those provided that</p> <p>11 compliance with the Voting Rights Act, yes.</p> <p>12 Q. Okay. I think we're on the same</p> <p>13 page. Let me just confirm. So it was your</p> <p>14 understanding in using these guidelines that</p> <p>15 so long as the plan enacted did not pair</p> <p>16 incumbents, was reasonably compact, and</p> <p>17 respected communities of interest, that it</p> <p>18 would be compliant with the Voting Rights Act,</p> <p>19 do I have that right?</p> <p>20 A. Not totally. But, you know, I</p> <p>21 would say that we -- by doing this, we</p> <p>22 were -- we thought we were in compliance by</p> <p>23 not discriminating or pushing or packing.</p> <p>24 Q. What do you mean by pushing or</p> <p>25 packing?</p>
<p style="text-align: right;">Page 46</p> <p>1 Q. Okay. So is it your understanding</p> <p>2 that not pairing incumbents -- let's break the</p> <p>3 three down. Is it your understanding that not</p> <p>4 pairing incumbents is of co-equal or higher</p> <p>5 importance than compliance with the Voting</p> <p>6 Rights Act under your guidelines?</p> <p>7 MR. WALKER: I'm sorry, Davin.</p> <p>8 Would you -- would you repeat the question?</p> <p>9 Q. (By Mr. Rosborough) Of course.</p> <p>10 So I'm just going to go through</p> <p>11 the three factors you mentioned, which you</p> <p>12 said were the key factors in the plan, I</p> <p>13 believe. Is it your understanding that under</p> <p>14 these legislative guidelines not pairing</p> <p>15 incumbents has either equal or greater</p> <p>16 importance to complying with the Voting Rights</p> <p>17 Act?</p> <p>18 A. I think we thought we were</p> <p>19 complying with the Voting Rights Act, sir.</p> <p>20 Q. And why did you think you were</p> <p>21 complying with the Voting Rights Act?</p> <p>22 A. A lot has happened in a short</p> <p>23 time frame, sir. And I can't remember</p> <p>24 everything. And I just apologize.</p> <p>25 Q. Well, let me ask you a different</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Piling African Americans into a</p> <p>2 district.</p> <p>3 Q. Okay. What role did that in the</p> <p>4 consideration of race play in drawing the 2023</p> <p>5 plan?</p> <p>6 A. I think we tried to draw it race</p> <p>7 neutral.</p> <p>8 Q. So is it correct that in drawing</p> <p>9 the 2023 plan, you did not consider race?</p> <p>10 A. I said we tried to draw it race</p> <p>11 neutral, yes, sir.</p> <p>12 Q. I'm just trying to make sure</p> <p>13 because that term can mean different things to</p> <p>14 different people. What do you mean by saying,</p> <p>15 we tried to draw it race neutral?</p> <p>16 A. When drawing the maps, we didn't</p> <p>17 have that flag, whatever it is, turned on.</p> <p>18 Q. Okay. So just to confirm, in</p> <p>19 drawing the -- or let me put it this way. In</p> <p>20 evaluating the plans that you wanted to put</p> <p>21 forward for the 2023 map, you were not looking</p> <p>22 at race as you evaluated those plans; is that</p> <p>23 correct?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. I'd like to do maybe one</p>

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<p style="text-align: right;">Page 49</p> <p>1 more exhibit. Take a few more minutes and 2 then we can take a short break if that's a 3 good time. Does that work, maybe we go five 4 more minutes or so and take a break? 5 A. Yes, sir. 6 Q. Okay. 7 MR. ROSBOROUGH: All right. 8 Tanner, would you mind pulling up Exhibit 5, 9 please. 10 MR. LOCKHEAD: It's coming. One 11 second. 12 MR. ROSBOROUGH: No rush. I 13 appreciate it. No, I'm sorry. That's not 14 mine. My fault. Let's see. This is the PI 15 opinion and order. If you don't have it 16 ready, I can pull it up here. 17 MR. LOCKHEAD: I've got it. Sorry 18 about that. 19 MR. ROSBOROUGH: No. No problem. 20 (Whereupon, Exhibit 5 was marked 21 for identification.) 22 Q. (By Mr. Rosborough) Okay. 23 Senator Livingston, can you see 24 what's up there, what we'll mark as Exhibit 5? 25 A. Yes, sir.</p>	<p style="text-align: right;">Page 51</p> <p>1 Okay. So I'm looking at the first full 2 paragraph here. And I'm just going to read 3 this paragraph. And you can tell me if I read 4 it correctly. And then I've got a question 5 for you about it. "The legislature enjoys 6 broad discretion and may consider a wide range 7 of remedial plans. As the legislature 8 considers such plans, it should be mindful of 9 the practical reality based on the ample 10 evidence of intensely racially polarized 11 voting adduced during the preliminary 12 injunction proceedings that any remedial plan 13 will need to include two districts in which 14 black voting either comprise a voting age 15 majority or something quite close to it." Did 16 I read that correctly? 17 A. Yes, sir. 18 Q. Senator Livingston, are you 19 familiar with that guidance from the Court in 20 this case? 21 A. That's actually the first time 22 that's been pointed out to me in a paragraph. 23 Q. Okay. In more general terms, are 24 you familiar that the Court provided that 25 guidance?</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. Okay. Do you recognize this 2 document? You can just pause there for one 3 second. 4 A. Yes, sir. 5 Q. Okay. And what do you understand 6 this to be? 7 A. It's the -- it's the Singleton 8 vs. Merrill which turned into cases -- is it 9 the three judge opinion? 10 Q. Sure. Sure. Yeah, I'm sorry. I 11 don't mean to make this a memory test. That's 12 not why we're here. 13 Do you recognize -- does it seem 14 correct to you that this is -- and it's quite 15 a long document. But this is the preliminary 16 injunction ordered by the three judge district 17 court in this case? 18 A. I would assume it is, yes, sir. 19 I don't know. 20 Q. Okay. I'll represent to you that 21 that's what that is for purposes of our 22 questioning. And I only have, I think, one 23 specific question about it. I'm not going to 24 take you through -- it's a 225-page document. 25 So if we could scroll down to page 6, please.</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Yes, sir. 2 Q. Okay. How, if at all, did you or 3 the committee account for that guidance in 4 drawing the 2023 plan? 5 A. It would be something quite 6 close to it. 7 Q. Okay. So is it your testimony 8 that the enacted plan, SB-5, which has a 9 second congressional district approximately 10 under 40 percent black voting age population 11 qualifies as something quite close to a 12 majority of black voting age population? 13 A. It was the committee's -- the 14 committee that decided that, yes, sir. 15 Q. Okay. And how did the committee 16 make that decision? 17 A. This is -- this is the plan that 18 was brought forward in the end and was 19 compromised upon. 20 Q. And we'll talk a little bit more. 21 But what did you mean when you say that this 22 plan was a compromise? 23 A. Well, you had -- the house had a 24 plan, and the senate had a plan, and this was 25 a compromised plan that could be passed.</p>

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<p style="text-align: right;">Page 53</p> <p>1 Q. As you were considering these 2 different plans and ultimately coming to a 3 plan that passed, did you have an 4 understanding of what it means for black 5 voters to have an opportunity to elect a 6 candidate of -- a representative of their 7 choice in a district? 8 A. Yes, sir, I think. 9 Q. Okay. And what was your 10 understanding? 11 A. I'll go back to what we talked 12 about a little while ago about having a 13 quality candidate that's funded. 14 Q. Okay. All right. Give me one 15 second. I think this may be a good time to 16 take a break. But let me just -- so just to 17 clarify a couple of things, was it your 18 view -- when you said a quality candidate that 19 was funded, can you tell me what you -- what 20 you mean by that? 21 A. I'll go back to the incident in 22 my hometown where you have two candidates 23 that were, you know, African Americans that 24 defeated well-funded candidates that were in 25 place in front of them. So...</p>	<p style="text-align: right;">Page 55</p> <p>1 or do you want to do a longer break so you can 2 get some food? 3 MR. WALKER: Ten is fine for us. 4 MR. ROSBOROUGH: Ten. All right. 5 So I see that it's 12:47 central time. We'll 6 come back at 12:57 central, if that works. 7 MR. WALKER: Thank you. 8 THE VIDEOGRAPHER: The time is 9 12:47 p.m. We're going off the record. 10 (A short break was taken.) 11 THE VIDEOGRAPHER: The time is 12 1:13 p.m. We're back on the record. 13 Q. (By Mr. Rosborough) Okay. 14 Senator Livingston, I want to come 15 back quickly to a couple of things we were 16 discussing earlier before moving on and then 17 talking about some specific maps. 18 Am I correct that you said earlier 19 you understood the Court to require creation 20 of two opportunity districts for minority 21 voters; is that accurate? 22 A. Yes, sir. 23 Q. Okay. In your view, how did 24 consideration of communities of interest, 25 compactness, and not pairing incumbents ensure</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. And how did you define -- in 2 your -- I think you said quality candidate. 3 What did you mean by that? 4 A. Somebody who has respect, I 5 would assume, and -- of his fellow peers. 6 Q. Okay. And what do -- and just you 7 what do you mean by that, has respect of their 8 peers? 9 A. I'm sorry? 10 Q. I'm sorry. Could you just clarify 11 what you mean by that, when you said someone 12 who has respect of their fellow peers? 13 A. Again, a quality candidate. 14 Somebody that has the respect of, not just 15 necessarily their peers, but their 16 constituents. 17 Q. Okay. So is it your understanding 18 that in the prior statewide races over the 19 past decade that there have not been black 20 preferred candidates who have funding and the 21 respect of their peers? 22 A. And several whites also. 23 MR. ROSBOROUGH: Okay. I think 24 now is a good time for us to take a break. 25 Should we do -- do you want to do ten minutes,</p>	<p style="text-align: right;">Page 56</p> <p>1 that you followed that guidance? 2 A. As we tried to develop a map 3 that was part of the committee, those played 4 a role in being able to develop what would 5 end up being two into one that was 6 competitive. 7 Q. And if I'm correct, you said that 8 race did not play a role in the development of 9 your plan; correct? 10 A. I think I stated that earlier. 11 And I was corrected when we off the role 12 (sic) a little bit that it was part of the -- 13 it was on -- it was on -- and that we weren't 14 paying attention to it, as the case may be. 15 But it was developed that way. 16 Q. Okay. So it would be accurate -- 17 would it be accurate to say that, while racial 18 figures may have been up on the screen as the 19 maps were drawn or shown, you were personally 20 not paying attention to race? 21 A. Yes, sir. 22 Q. Okay. Other than compactness, 23 communities of interest, and not pairing 24 incumbents, were there other considerations 25 you took account of in deciding on a new</p>

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<p style="text-align: right;">Page 57</p> <p>1 congressional districting plan?</p> <p>2 A. I would have to say committee</p> <p>3 members were offering advice.</p> <p>4 Q. Do you recall any specific advice?</p> <p>5 MR. WALKER: I'm going to assert</p> <p>6 privilege as to communications or statements</p> <p>7 made by members of the reapportionment</p> <p>8 committee that have not waived the privilege</p> <p>9 immunity and instruct the witness not to</p> <p>10 answer to that extent.</p> <p>11 Q. (By Mr. Rosborough) Okay.</p> <p>12 So Senator Livingston, if you can</p> <p>13 answer that question without divulging</p> <p>14 conversations you had other committee members,</p> <p>15 you can go ahead.</p> <p>16 A. I do not recall, sir.</p> <p>17 Q. Okay. Let's talk about the</p> <p>18 legislative special session. The committee</p> <p>19 had its first meeting during the special</p> <p>20 session on the first day of the session on</p> <p>21 Monday, July 17th; is that correct?</p> <p>22 A. I really -- I honestly don't</p> <p>23 remember. It was all a whirlwind.</p> <p>24 Q. All right. At the first meeting</p> <p>25 of the committee during this special session,</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. Are you aware of who else was</p> <p>2 involved in developing that plan?</p> <p>3 A. There were several, I think that</p> <p>4 may have played a role. But I don't</p> <p>5 remember.</p> <p>6 Q. Are you aware of what instructions</p> <p>7 were given to Mr. Hinaman in the drawing the</p> <p>8 community of interest plan?</p> <p>9 A. No, sir.</p> <p>10 Q. Do you recall when a full draft of</p> <p>11 that plan was complete?</p> <p>12 A. I do not remember, no, sir.</p> <p>13 Q. Do you recall any feedback given</p> <p>14 to Mr. Hinaman after seeing an initial draft</p> <p>15 of that plan?</p> <p>16 A. I do not recall that, no, sir.</p> <p>17 Q. Do you recall if Mr. Hinaman made</p> <p>18 any changes to the community of interest plan</p> <p>19 after he first showed it to you or other</p> <p>20 committee members?</p> <p>21 A. I do not know that.</p> <p>22 MR. ROSBOROUGH: If we could pull</p> <p>23 up Exhibit 6, please.</p> <p>24 Q. Senator Livingston, you'll see</p> <p>25 this exhibit has two pages. There's a map and</p>
<p style="text-align: right;">Page 58</p> <p>1 do you recall that a number of new plans were</p> <p>2 introduced?</p> <p>3 A. I think there were several plans</p> <p>4 offered, yes, sir.</p> <p>5 Q. Okay. Does the community of</p> <p>6 interest plan ring a bell to you?</p> <p>7 A. I believe it was the one that</p> <p>8 was originally introduced, yes, sir.</p> <p>9 Q. Okay. And what about the</p> <p>10 opportunity plan, does that ring a bell to</p> <p>11 you?</p> <p>12 A. I remember it, yes.</p> <p>13 Q. Do you recall any other plans that</p> <p>14 were discussed at the hearing?</p> <p>15 A. Not the names, but I know there</p> <p>16 were several offered that same day.</p> <p>17 Q. Okay. Let's talk about the</p> <p>18 community of interest plan. What was --</p> <p>19 what's your understanding of the origin of the</p> <p>20 community of interest plan?</p> <p>21 A. I believe that was the map that</p> <p>22 was designed by Randy Hinaman.</p> <p>23 Q. And what was your involvement in</p> <p>24 the development of that plan, if any?</p> <p>25 A. Very little.</p>	<p style="text-align: right;">Page 60</p> <p>1 then there's some statistics at the bottom.</p> <p>2 Do you see that?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. Let's go up to the top at</p> <p>5 the moment, the first page. Does this appear</p> <p>6 to be the community of interest plan that we</p> <p>7 were just discussing?</p> <p>8 (Whereupon, Exhibit 6 was marked</p> <p>9 for identification.)</p> <p>10 THE WITNESS: That's the label,</p> <p>11 yes.</p> <p>12 Q. (By Mr. Rosborough) Okay. And is</p> <p>13 it correct that this plan was worked on by</p> <p>14 Mr. Hinaman, you, Mr. Pringle, Dr. Trey Hood,</p> <p>15 and a couple of attorneys?</p> <p>16 A. Yes, sir, that sounds familiar.</p> <p>17 Q. Okay. What were your priorities.</p> <p>18 You mentioned community of interest as one of</p> <p>19 the key priorities in developing a new plan.</p> <p>20 What particular communities of interest were</p> <p>21 you considering?</p> <p>22 A. We considered the three. One</p> <p>23 was going to be the Gulf Coast, one of the</p> <p>24 Wiregrass would be a community of interest,</p> <p>25 and one would be the Black Belt being</p>

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<p style="text-align: right;">Page 61</p> <p>1 consolidated into two districts rather than 2 three. 3 Q. Okay. And how did the committee 4 decide on prioritizing those three communities 5 of interest? 6 A. How did the committee? How did 7 the committee form that? 8 Q. Yes, sir. 9 A. It -- we had members of each of 10 the three areas that were a part of our 11 committee, and they all expressed interest. 12 Q. Okay. The community of interest 13 plan that you're seeing here was the first 14 plan passed out at the committee, is that 15 correct, to the best of your recollection? 16 A. The best of my recollection, 17 yes, sir. 18 Q. Okay. 19 A. I can't remember which one came 20 out first. 21 Q. And to the best of your 22 recollection, this community of interest plan 23 also passed the full house of representatives; 24 is that correct? 25 A. Yes, sir.</p>	<p style="text-align: right;">Page 63</p> <p>1 remember. 2 MR. ROSBOROUGH: Let's pull up 3 Exhibit 7, please. 4 (Whereupon, Exhibit 7 was marked 5 for identification.) 6 Q. (By Mr. ^ Attyname) All right. 7 Senator Livingston, does this look 8 familiar to you? 9 A. Yes, sir. 10 Q. And what do you recognize this as? 11 A. It's a different format. But it 12 seems like it might be the functionality or 13 whatever -- the performance test. 14 Q. Okay. And you were -- you 15 attended the deposition of Mr. Hinaman earlier 16 today? 17 A. Yes, sir. 18 Q. And do you recall this analysis 19 being discussed during that deposition? 20 A. Yes, sir. 21 Q. And you -- do you agree that in 22 the four races analyzed here, which are the 23 2020 presidential race, the 2020 U.S. Senate, 24 2018 governor, 2018 attorney general, that in 25 two of those four races black preferred</p>
<p style="text-align: right;">Page 62</p> <p>1 Q. Okay. In looking at the lines 2 here, does the community of interest plan keep 3 the Gulf Coast counties together in one 4 district? 5 A. Yes, sir. 6 Q. Does the community of interest 7 plan put the Black Belt in two districts 8 rather than three? 9 A. Yes, sir. 10 Q. And does the community of interest 11 plan keep together what you consider to be the 12 Wiregrass other than part of Covington County? 13 A. Yes, sir. 14 Q. Did you or do you consider this 15 plan to have met the committee's goals in 16 terms of communities of interest? 17 A. Initially, yes, sir. 18 Q. Okay. You said initially. Did 19 that change at any point in time? 20 A. I'm not sure. I don't -- I 21 don't think it has, no, sir. 22 Q. Okay. Dr. Hood performed a 23 performance or functionality analysis 24 regarding this plan; is that accurate? 25 A. I assume, yes, sir. I don't</p>	<p style="text-align: right;">Page 64</p> <p>1 candidates won, and in the other two, white 2 preferred candidates won; is that correct? 3 A. Yes, sir. 4 Q. Okay. Did you have any assessment 5 of how this plan performed in remedying the 6 likely Voting Rights Act violation identified 7 by the Court? 8 A. Would you repeat that for me, 9 please? 10 Q. Sure. Did you have any assessment 11 of how then this community of interest plan 12 performed in terms of remedying the likely 13 Voting Rights Act violation found by the 14 Court? 15 A. No, sir. 16 Q. Okay. Do you believe this plan 17 would have provided a fair opportunity for 18 African American voters to elect preferred 19 candidates in the second district? 20 A. It might have, yes, sir. 21 Q. Okay. And why is that in your 22 view? 23 A. I think it shows two of each 24 winning. 25 Q. And why, if at all, does that</p>

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<p style="text-align: right;">Page 65</p> <p>1 matter in your assessment?</p> <p>2 A. It's 50/50.</p> <p>3 Q. Okay. I'm sorry. Would</p> <p>4 somebody -- I thought I heard somebody else</p> <p>5 say something in the room. Can I -- was</p> <p>6 anything else just -- was there anyone in the</p> <p>7 room just trying to speak?</p> <p>8 MR. WALKER: Are you talking about</p> <p>9 in the room where we are?</p> <p>10 MS. ROSBOROUGH: Yes.</p> <p>11 MR. WALKER: No. No. Nobody -- I</p> <p>12 did not say anything.</p> <p>13 MR. ROSBOROUGH: Okay.</p> <p>14 MR. WALKER: And there's no one</p> <p>15 else -- Davin, there's no one else in the</p> <p>16 room.</p> <p>17 MR. ROSBOROUGH: Okay. I just</p> <p>18 wanted to make sure. All right. We can take</p> <p>19 this down. Thank you.</p> <p>20 Q. (By Mr. Rosborough) So Senator</p> <p>21 Livingston, at some point, is it correct that</p> <p>22 you switched your focus from this community of</p> <p>23 interest plan to other plans?</p> <p>24 A. The committee members changed</p> <p>25 focus, yes, sir.</p>	<p style="text-align: right;">Page 67</p> <p>1 A. No, sir.</p> <p>2 Q. Okay. If we can scroll down in</p> <p>3 this article to another page, please. Okay.</p> <p>4 So in this third page -- this article is from</p> <p>5 July 20th. So this would have been, I think,</p> <p>6 the Thursday of the special session. The</p> <p>7 article says, "Livingston said senate</p> <p>8 republicans began working on their own map</p> <p>9 because the committee 'got some information'</p> <p>10 that led them to prioritize 'compactness and</p> <p>11 communities of interest being as important as</p> <p>12 the black voting age population.'" What did</p> <p>13 you mean by that, Senator Livingston?</p> <p>14 A. The committee members had</p> <p>15 received some additional information they</p> <p>16 thought they should go in the direction of</p> <p>17 compactness, communities of interest, and</p> <p>18 making sure that congressmen are not paired</p> <p>19 against each other, congressmen or women are</p> <p>20 not paired against each other.</p> <p>21 Q. And who did it receive that</p> <p>22 information from?</p> <p>23 A. I don't know that, sir.</p> <p>24 Q. How did you first learn about that</p> <p>25 information?</p>
<p style="text-align: right;">Page 66</p> <p>1 Q. Okay. And why, in your view, did</p> <p>2 committee members change focus from the</p> <p>3 community of interest plan to other plans?</p> <p>4 A. I can't answer what brought them</p> <p>5 to where they got to. I just know they</p> <p>6 moved, and when -- they moved.</p> <p>7 Q. And what about you personally, did</p> <p>8 anything in particular spark your decision to</p> <p>9 move your focus from the community of interest</p> <p>10 plan to other plans?</p> <p>11 A. The committee moved, and I was</p> <p>12 going to be left behind.</p> <p>13 Q. Okay. You didn't have any</p> <p>14 independent reason for switching your focus to</p> <p>15 other plans other than that's where the</p> <p>16 majority of the committee was?</p> <p>17 A. I did not, no, sir. I did not,</p> <p>18 no, sir.</p> <p>19 Q. Okay.</p> <p>20 MR. ROSBOROUGH: Can we pull up</p> <p>21 Exhibit 8, please?</p> <p>22 (Whereupon, Exhibit 8 was marked</p> <p>23 for identification.)</p> <p>24 Q. (By Mr. Rosborough) Have you seen</p> <p>25 this news article before?</p>	<p style="text-align: right;">Page 68</p> <p>1 A. When we got ready to pass the</p> <p>2 other plan, that -- it was a large hiccup.</p> <p>3 Q. Is it your understanding that this</p> <p>4 information came from people in Washington?</p> <p>5 A. I don't know where it came from.</p> <p>6 Q. Why did you find this information</p> <p>7 reliable?</p> <p>8 A. There were -- I was -- I was a</p> <p>9 single member left.</p> <p>10 Q. Do you know who received this</p> <p>11 information on the committee?</p> <p>12 A. I do not.</p> <p>13 Q. How did you first learn about this</p> <p>14 information then?</p> <p>15 A. It was a committee conversation.</p> <p>16 Q. Do you recall who mentioned it?</p> <p>17 A. I do not, no, sir.</p> <p>18 Q. Do you have any idea at all who or</p> <p>19 what type of figure was the source of this</p> <p>20 information, even if you're not certain?</p> <p>21 A. No, sir.</p> <p>22 MR. ROSBOROUGH: Okay. We can</p> <p>23 take this down.</p> <p>24 Q. Senator Singleton -- I'm sorry,</p> <p>25 Senator Livingston, do you recall</p>

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<p style="text-align: right;">Page 69</p> <p>1 the opportunity --</p> <p>2 A. We look a lot a like.</p> <p>3 Q. Do you recall the opportunity plan</p> <p>4 as another plan that was introduced in the</p> <p>5 committee during the special session?</p> <p>6 A. I remember it was submitted, I</p> <p>7 think, electronically. I don't remember who</p> <p>8 by.</p> <p>9 Q. Okay. Is it correct that Senator</p> <p>10 Dan Roberts mailed the plan in?</p> <p>11 A. It may have been, yes, sir.</p> <p>12 Q. Okay. Do you recall when you</p> <p>13 first saw this plan?</p> <p>14 A. I do not, no, sir.</p> <p>15 Q. Do you recall providing any</p> <p>16 feedback regarding this plan?</p> <p>17 A. I don't know. I do not, no,</p> <p>18 sir.</p> <p>19 MR. ROSBOROUGH: Okay. Can we</p> <p>20 pull back up Exhibit No. 1, which is Senator</p> <p>21 Livingston's interrogatory responses, please.</p> <p>22 And I'd like to -- if you could scroll down to</p> <p>23 No. 3, interrogatory No. 3 and the response.</p> <p>24 Q. So interrogatory No. 3 says,</p> <p>25 describe the role played with respect to</p>	<p style="text-align: right;">Page 71</p> <p>1 Chris Brown authored this plan?</p> <p>2 A. I think maybe Senator Roberts</p> <p>3 told us that.</p> <p>4 Q. Okay. Do you have any</p> <p>5 understanding of whether Mr. Brown was</p> <p>6 retained by any individual or entity to draw</p> <p>7 this plan?</p> <p>8 A. Not that I'm aware of, no, sir.</p> <p>9 Q. Do you have any understanding of</p> <p>10 any guidance or instructions given to</p> <p>11 Mr. Brown in drawing this plan?</p> <p>12 A. No, sir.</p> <p>13 Q. Did you have any belief one way or</p> <p>14 another about where this plan would provide a</p> <p>15 fair opportunity to black voters to elect a</p> <p>16 preferred candidate in the second district?</p> <p>17 A. I assume you're still on the</p> <p>18 opportunity plan?</p> <p>19 Q. Yes, sir. Thank you for</p> <p>20 clarifying.</p> <p>21 A. No, sir.</p> <p>22 Q. You had no view one way or the</p> <p>23 other?</p> <p>24 A. No, sir.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 70</p> <p>1 legislative remedial plans -- to the</p> <p>2 legislative remedial plans by each individual</p> <p>3 and/or entity identified in interrogatories</p> <p>4 No. 1 or 2. Your response then lists the four</p> <p>5 different plans discussed. And under</p> <p>6 opportunity plan, it says, Chris Brown</p> <p>7 authored the plan and Senator Dan Roberts</p> <p>8 delivered it to the reapportionment office; is</p> <p>9 that correct?</p> <p>10 A. That's what it says, yes, sir.</p> <p>11 Q. Okay. And who is Chris Brown?</p> <p>12 A. Mr. Brown is a political</p> <p>13 consultant in Birmingham, Alabama.</p> <p>14 Q. Okay. Is he the owner of Red</p> <p>15 State Strategies?</p> <p>16 A. I believe that's the company,</p> <p>17 yes, sir.</p> <p>18 Q. How did he come -- how did</p> <p>19 Mr. Brown come to be involved in the map</p> <p>20 drawing process?</p> <p>21 A. I have no idea.</p> <p>22 Q. When did you first learn of</p> <p>23 Mr. Brown's involvement in the process?</p> <p>24 A. I don't remember, sir.</p> <p>25 Q. How did you come to learn that</p>	<p style="text-align: right;">Page 72</p> <p>1 MR. ROSBOROUGH: Can we put up</p> <p>2 Exhibit 9. Let's put back up Exhibit 9.</p> <p>3 Actually, no, I'm sorry. I'm sorry. We had</p> <p>4 that up already. Is that correct? Did we put</p> <p>5 up exhibit 9 yet? I lost track there.</p> <p>6 COURT REPORTER: I am going to</p> <p>7 verify.</p> <p>8 MR. ROSBOROUGH: I think maybe we</p> <p>9 didn't. So let's put it up. Let's go ahead</p> <p>10 and put it up as Exhibit 9.</p> <p>11 COURT REPORTER: We didn't.</p> <p>12 MR. ROSBOROUGH: Okay. Thank you.</p> <p>13 Sorry. I lost track there.</p> <p>14 (Whereupon, Exhibit 9 was marked</p> <p>15 for identification.)</p> <p>16 Q. Are Senator Livingston, do you</p> <p>17 recognize this as the opportunity plan that we</p> <p>18 were just discussing?</p> <p>19 A. That's the label I see at the</p> <p>20 top, yes, sir.</p> <p>21 Q. Okay. And do you recall how this</p> <p>22 plan differed from the community of interest</p> <p>23 plan?</p> <p>24 A. Not unless they're side by side,</p> <p>25 no, sir.</p>

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<p style="text-align: right;">Page 73</p> <p>1 Q. Okay. Does it sound correct to</p> <p>2 you that the black voting age population in</p> <p>3 the second congressional district in the</p> <p>4 opportunity plan was approximately 38 percent?</p> <p>5 A. I do not remember the numbers,</p> <p>6 no, sir.</p> <p>7 Q. Okay. You don't remember one way</p> <p>8 or the other, is that correct?</p> <p>9 A. No. I don't remember those</p> <p>10 numbers, no, sir.</p> <p>11 Q. Okay. All right.</p> <p>12 So if we take a look -- I don't</p> <p>13 know if you can zoom in at all more. If not,</p> <p>14 we'll live with it. Thank you.</p> <p>15 So let's look at the second</p> <p>16 congressional district in the opportunity</p> <p>17 plan. Am I correct that the second district</p> <p>18 in this plan includes the whole counties of --</p> <p>19 well, let me ask you: Can you identify for me</p> <p>20 which counties are listed -- are included in</p> <p>21 CD-2 under this plan in whole or part?</p> <p>22 A. It looks like Houston, Geneva,</p> <p>23 Coffee, Dale, Henry, Barber, Pike, Crenshaw,</p> <p>24 Montgomery, Bullock, Russell, Macon, and</p> <p>25 Elmore.</p>	<p style="text-align: right;">Page 75</p> <p>1 Q. Okay. Do you know why this is</p> <p>2 named Livingston congressional plan 2?</p> <p>3 A. Because I think I brought it to</p> <p>4 the floor.</p> <p>5 Q. Okay.</p> <p>6 A. Or committee. I don't remember</p> <p>7 which -- if it went to the committee first.</p> <p>8 Q. This plan was quite similar in a</p> <p>9 number of respects to the opportunity plan we</p> <p>10 just looked at; correct?</p> <p>11 A. I think you said that, yes, sir.</p> <p>12 Q. Okay. And specifically, if we can</p> <p>13 sort of zoom in to congressional district 2,</p> <p>14 congressional district 2 in the Livingston 2</p> <p>15 plan and the opportunity plan appear to be</p> <p>16 identical; is that correct?</p> <p>17 A. I assume you've seen them</p> <p>18 side-by-side. I haven't, so...</p> <p>19 Q. Well, if we go through, it has the</p> <p>20 full counties of Geneva, Houston, Coffee,</p> <p>21 Dale, Henry, Crenshaw, Pike, Barber,</p> <p>22 Montgomery, Bullock, Russell, Macon, and most</p> <p>23 of Elmore except that little piece there; is</p> <p>24 that accurate?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 74</p> <p>1 Q. Okay. And does it appear there</p> <p>2 might be a little piece of Elmore that's</p> <p>3 included in congressional district 3?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay.</p> <p>6 MR. ROSBOROUGH: All right. You</p> <p>7 can take that down. Thank you.</p> <p>8 Q. Senator Livingston, do you recall</p> <p>9 introducing a plan in the senate known as the</p> <p>10 Livingston 2 plan?</p> <p>11 A. Yes, sir.</p> <p>12 MR. ROSBOROUGH: Let's go ahead</p> <p>13 and bring up Exhibit 10.</p> <p>14 MR. WALKER: I'm sorry, Davin,</p> <p>15 what exhibit is this?</p> <p>16 MR. ROSBOROUGH: Oh, I'm sorry.</p> <p>17 This is Exhibit 10.</p> <p>18 MR. WALKER: 10. I just couldn't</p> <p>19 hear you.</p> <p>20 MR. ROSBOROUGH: Yes, no problem.</p> <p>21 (Whereupon, Exhibit 10 was marked</p> <p>22 for identification.)</p> <p>23 Q. Senator, do you recognize this as</p> <p>24 the Livingston plan 2?</p> <p>25 A. I think, yes, sir.</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. And those -- that appears to be</p> <p>2 the same configuration of district 2 in the</p> <p>3 opportunity plan?</p> <p>4 A. Yes, sir, I think you are</p> <p>5 correct.</p> <p>6 MR. ROSBOROUGH: Okay. And if we</p> <p>7 scroll down to the second page. Thank you.</p> <p>8 Q. And we look at the black voting</p> <p>9 age population in that last column of</p> <p>10 district 2, we see it is 38.31 percent. Does</p> <p>11 that seem right?</p> <p>12 A. That's what it looks like, yes,</p> <p>13 sir.</p> <p>14 Q. Okay. What is the relationship --</p> <p>15 we just -- we just saw that congressional</p> <p>16 district 2 is identical between the</p> <p>17 opportunity plan and the Livingston 2. What</p> <p>18 is the relationship between those two plans?</p> <p>19 A. Again, I'd have to look at them</p> <p>20 side-by-side. I think there are some</p> <p>21 differences, but I just don't remember.</p> <p>22 Q. Is the Livingston 2 plan basically</p> <p>23 the opportunity plan with some certain changes</p> <p>24 made to it?</p> <p>25 A. I would say probably fairly</p>

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<p style="text-align: right;">Page 77</p> <p>1 similar, yes, sir.</p> <p>2 Q. Okay. Do you recall why changes</p> <p>3 were made to the opportunity plan such that it</p> <p>4 turned into Livingston 2?</p> <p>5 A. I don't really remember. I</p> <p>6 would say tweaks and compactness and</p> <p>7 communities of interest and zero deviation,</p> <p>8 making sure and less precincts being split.</p> <p>9 Q. Okay. I believe --</p> <p>10 MR. ROSBOROUGH: And you can take</p> <p>11 that down, Tanner. Thank you.</p> <p>12 Q. (By Mr. Rosborough) You testified</p> <p>13 a few minutes ago that you had no view one way</p> <p>14 or the other as to the opportunity plan, about</p> <p>15 whether it would allow black voters a fair</p> <p>16 opportunity to elect candidates of choice in a</p> <p>17 second district; correct?</p> <p>18 A. Was that a question? I'm sorry.</p> <p>19 Q. Oh, I'm sorry. Is that correct?</p> <p>20 A. Would you repeat your question</p> <p>21 if that was a question? I'm sorry.</p> <p>22 Q. I will. I will.</p> <p>23 Am I correct that a few minutes</p> <p>24 ago -- I'm sorry. I'm hearing an echo.</p> <p>25 Okay. Am I correct that a few</p>	<p style="text-align: right;">Page 79</p> <p>1 for identification.)</p> <p>2 Q. (By Mr. Rosborough) Okay. Senator</p> <p>3 Livingston, have you seen this article before?</p> <p>4 It is a July 18th article from 1819 News?</p> <p>5 A. I have -- I have not seen it,</p> <p>6 no, sir.</p> <p>7 Q. Okay. You are quoted in this</p> <p>8 article in a few places. And I want to ask</p> <p>9 you about those. So let's -- perfect. Stop</p> <p>10 right there.</p> <p>11 At the top of that page, you are</p> <p>12 quoted as saying -- well let's set some</p> <p>13 context first. So the title of this article</p> <p>14 is House and Senate Committee Narrow</p> <p>15 Redistricting Plans to Two. Do you recall</p> <p>16 that this is the point where the senate had</p> <p>17 passed the Livingston 2 plan, the house had</p> <p>18 passed the communities of interest plan, and</p> <p>19 there had not yet between a resolution between</p> <p>20 the two plans? Does that sound right to you?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay. I believe in referring then</p> <p>23 to the Livingston plan 2, you say -- you're</p> <p>24 quoted as saying, "This plan is based on</p> <p>25 neutral principles promoting communities of</p>
<p style="text-align: right;">Page 78</p> <p>1 minutes ago, you testified that you did not</p> <p>2 know one way or the other about whether the</p> <p>3 opportunity plan would allow black voters a</p> <p>4 fair chance to elect candidates of choice in a</p> <p>5 second district; am I correct about that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So I posed the same</p> <p>8 question to you for this plan. Did you have a</p> <p>9 view one way or the other as to whether this</p> <p>10 plan would allow black voters a fair chance to</p> <p>11 elect candidates of choice in two districts?</p> <p>12 A. I think it provided a better</p> <p>13 opportunity than the opportunity plan.</p> <p>14 Q. And what is the basis of that</p> <p>15 belief?</p> <p>16 A. The tweaks that we made in</p> <p>17 areas.</p> <p>18 Q. Okay. What particular tweaks are</p> <p>19 you thinking of here?</p> <p>20 A. I saw so many maps, sir, I don't</p> <p>21 remember. I'm sorry.</p> <p>22 Q. Okay.</p> <p>23 MR. ROSBOROUGH: Let's pull up</p> <p>24 Exhibit 11, please.</p> <p>25 (Whereupon, Exhibit 11 was marked</p>	<p style="text-align: right;">Page 80</p> <p>1 interest in the Gulf, Black Belt and</p> <p>2 Wiregrass, ensuring that the state's</p> <p>3 long-terms principles of compact districts is</p> <p>4 given a fuller and fairer effect." Is that</p> <p>5 quote accurate to the best of your knowledge?</p> <p>6 A. Yes, sir, I think so.</p> <p>7 Q. Okay. What did you mean by that?</p> <p>8 A. I think it's self-explanatory.</p> <p>9 Q. Okay. So you say first that "The</p> <p>10 plan is based on neutral principles promoting</p> <p>11 communities of interest in the Gulf, Black</p> <p>12 Belt and Wiregrass." I think we've talked</p> <p>13 about that. But then you say, "Ensuring that</p> <p>14 the state's long-term principles of compact</p> <p>15 districts is given a fuller and fairer</p> <p>16 effect." What did you particularly mean by</p> <p>17 the compact districts giving a fuller and</p> <p>18 fairer effect?</p> <p>19 A. I think that in Livingston 2 we</p> <p>20 made the districts a little more compact,</p> <p>21 providing -- I've forgotten what the two</p> <p>22 categories are in compactness and communities</p> <p>23 of interest. But providing higher scores.</p> <p>24 Q. Okay. So to the best of your</p> <p>25 recollection, were the main differences</p>

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<p style="text-align: right;">Page 81</p> <p>1 between the opportunity plan and Livingston 2</p> <p>2 improve compactness in the Livingston 2 plan?</p> <p>3 A. I believe that's correct.</p> <p>4 But I -- I believe that's correct.</p> <p>5 Q. Okay. And then you go on to</p> <p>6 say -- or I should say you're quoted as</p> <p>7 saying, "While the plan is not graded based on</p> <p>8 race, the result is fairly applied with these</p> <p>9 neutral principles and the black voting age</p> <p>10 population in district 2, which was in the</p> <p>11 existing map" -- "which was in the existing</p> <p>12 map was like around 30 percent, is now 38.8</p> <p>13 percent in this plan. District 7 preserves a</p> <p>14 core which is 50.43 percent black voting age</p> <p>15 population. This plan complies with the</p> <p>16 Voting Rights Act." Does that appear to be an</p> <p>17 accurate quotation of what you said?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. What did you mean when you</p> <p>20 said "The plan is not graded based on race"?</p> <p>21 A. It goes back to we were looking</p> <p>22 at the principles of compactness, communities</p> <p>23 of interest, and not putting the</p> <p>24 candidates -- competing candidates against</p> <p>25 each other. And the benefit would be the --</p>	<p style="text-align: right;">Page 83</p> <p>1 A. I guess we started making</p> <p>2 sausage at that point in time.</p> <p>3 Q. Can you say a little bit more</p> <p>4 about that?</p> <p>5 A. Making sausage? That's what</p> <p>6 they describe the legislative process as, as</p> <p>7 making sausage. And we had two different</p> <p>8 bills, and we had to come to some compromise</p> <p>9 in between them to pass one.</p> <p>10 Q. Okay. And was the result of that</p> <p>11 sausage making the Livingston 3 plan which was</p> <p>12 introduced and passed out of the conference</p> <p>13 committee?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay.</p> <p>16 MR. ROSBOROUGH: Can we pull up</p> <p>17 Exhibit 12, please.</p> <p>18 (Whereupon, Exhibit 12 was marked</p> <p>19 for identification.)</p> <p>20 MR. ROSBOROUGH: Thank you.</p> <p>21 Q. (By Mr. Rosborough) Okay.</p> <p>22 Senator Livingston, does this</p> <p>23 appear to be the Livingston congressional</p> <p>24 plan 3 that passed out of the conference</p> <p>25 committee?</p>
<p style="text-align: right;">Page 82</p> <p>1 the improvement in the BVAP.</p> <p>2 Q. So when you say "this plan</p> <p>3 complies with the Voting Rights Act," was</p> <p>4 it -- was your understanding of that based on</p> <p>5 those three principles you just discussed,</p> <p>6 communities of interest, compactness, and no</p> <p>7 pairing incumbents?</p> <p>8 A. And the improvement of the BVAP.</p> <p>9 Q. And improvement of the BVAP, okay.</p> <p>10 Do you recall any sort of</p> <p>11 performance or functionality analysis such as</p> <p>12 the one that Mr. Hood performed on the</p> <p>13 earlier -- Dr. Hood, I'm sorry, performed on</p> <p>14 the earlier plan being run on this plan?</p> <p>15 A. I think there was one run that</p> <p>16 we were able to produce on Friday, yes, sir.</p> <p>17 Q. Okay. Okay. So after this plan</p> <p>18 passed the senate, Livingston 2 and</p> <p>19 communities of interest passed the house, what</p> <p>20 happened next in the legislative process?</p> <p>21 MR. ROSBOROUGH: And I'm sorry.</p> <p>22 You can pull that down. Thanks.</p> <p>23 THE WITNESS: So what happened</p> <p>24 next in the legislative process?</p> <p>25 Q. (By Mr. Rosborough) Yes, sir.</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. How would you characterize</p> <p>3 this plan in contrast to Livingston 2?</p> <p>4 A. The primary changes are down in</p> <p>5 district 2. You added -- I can't really see</p> <p>6 them. But you added two counties to the west</p> <p>7 there.</p> <p>8 Q. Would that be Lowndes and Butler?</p> <p>9 A. I think that's correct, yes,</p> <p>10 sir. It's awful small. And the district 3,</p> <p>11 Etowah County was put back whole and added</p> <p>12 into the third congressional district. The</p> <p>13 remainder of Blount was put into the fourth</p> <p>14 congressional district. And in the fifth</p> <p>15 congressional district, Lawrence County was</p> <p>16 added into the fifth congressional district.</p> <p>17 Otherwise, it was just -- changes were made</p> <p>18 in deviation to make it -- make it whole.</p> <p>19 That brought back even higher scores in</p> <p>20 compactness and communities of interest than</p> <p>21 we had before.</p> <p>22 Q. Okay. What were the reasons to</p> <p>23 the best of your recollection for these</p> <p>24 changes that you just described?</p> <p>25 A. Again, I just stated, we brought</p>

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<p style="text-align: right;">Page 85</p> <p>1 back higher community of interest and</p> <p>2 compactness scores than there was in the</p> <p>3 Polsby-Popper and the Reock scores.</p> <p>4 Q. Okay. I think I understand in</p> <p>5 terms of compactness. How did this improve</p> <p>6 off the previous maps in terms of communities</p> <p>7 of interest?</p> <p>8 A. We actually added what would be</p> <p>9 considered one up in the fifth congressional</p> <p>10 district between Lawrence and Morgan</p> <p>11 Counties. Lawrence County being the old farm</p> <p>12 belt there, and Morgan being the industrial</p> <p>13 county where the gins used to be in the day,</p> <p>14 so --</p> <p>15 Q. Okay. Any other -- I'm sorry</p> <p>16 about that. I didn't mean to interrupt you.</p> <p>17 A. That's all.</p> <p>18 Q. Okay. Were there any other</p> <p>19 changes made to improve the community of</p> <p>20 interest configurations from previous plans?</p> <p>21 A. We maintained the Black Belt in</p> <p>22 two districts and obviously the Wiregrass and</p> <p>23 the Gulf Coast community of interest.</p> <p>24 Q. Did the -- did that initial plan,</p> <p>25 the community of interest plan equally comply</p>	<p style="text-align: right;">Page 87</p> <p>1 role, Senator Livingston.</p> <p>2 A. My role as chair was to get a</p> <p>3 plan out that we thought was fair and did</p> <p>4 what the Court said. We focused on</p> <p>5 communities of interest, compactness, and not</p> <p>6 putting incumbents against each other.</p> <p>7 Q. Okay. Okay.</p> <p>8 What were the areas, if you</p> <p>9 recall, that you needed to compromise on with</p> <p>10 the house plan? Was that primarily in the</p> <p>11 north part of the state, or were there other</p> <p>12 areas?</p> <p>13 A. I apologize. But without</p> <p>14 looking at both maps, I couldn't tell you.</p> <p>15 So -- obviously one of the compromises we had</p> <p>16 to have was in making Etowah County whole.</p> <p>17 Past that, I don't remember.</p> <p>18 Q. Okay. Do you remember any</p> <p>19 differences of opinion between yourself and</p> <p>20 Representative Pringle as to the boundaries of</p> <p>21 a compliant plan?</p> <p>22 A. Would you repeat that for me,</p> <p>23 please?</p> <p>24 Q. Sure. Obviously, there was a</p> <p>25 house map that passed and a senate map that</p>
<p style="text-align: right;">Page 86</p> <p>1 in terms of those three communities of</p> <p>2 interest?</p> <p>3 A. I think the Gulf Coast did and</p> <p>4 the Wiregrass did and the Black Belt, yes.</p> <p>5 The north Alabama with Lawrence County and</p> <p>6 Morgan County being similar -- did not -- was</p> <p>7 not included in that.</p> <p>8 Q. Okay. I believe in your</p> <p>9 interrogatory response, you named a number of</p> <p>10 different senators who contributed to the</p> <p>11 input of the plan's design. Senator Barefoot,</p> <p>12 Senator Bell, Senator Chasteen, yourself,</p> <p>13 Senator Orr, Senator Roberts, Senator</p> <p>14 Scofield, and Senator Williams. Do you recall</p> <p>15 amongst all these different contributions what</p> <p>16 your particular role was?</p> <p>17 MR. WALKER: Let me caution the</p> <p>18 witness that I have asserted the legislative</p> <p>19 immunity and privilege on behalf of other</p> <p>20 members of the reapportionment committee. And</p> <p>21 in his answer, if he can answer the question</p> <p>22 without saying what other members said.</p> <p>23 Q. (By Mr. Rosborough) Right.</p> <p>24 And just to be clear, my question</p> <p>25 at the moment was just about your particular</p>	<p style="text-align: right;">Page 88</p> <p>1 passed. Do you recall what differences there</p> <p>2 were between you and Representative Pringle</p> <p>3 that needed to be resolved in a final plan?</p> <p>4 A. Obviously Chairman Pringle was</p> <p>5 very, very interested in his community of</p> <p>6 interest map. I don't remember any -- the</p> <p>7 differences, no.</p> <p>8 Q. Okay. But you -- and I don't want</p> <p>9 to put words your mouth, so tell me if I'm</p> <p>10 incorrect on this. But I believe that you</p> <p>11 testified that you had been supportive of the</p> <p>12 community of interest map, but went along with</p> <p>13 this other chain of maps, which was</p> <p>14 opportunity to Livingston 2 to Livingston 3</p> <p>15 because of outside input; is that correct?</p> <p>16 A. I don't think I said outside</p> <p>17 influence. I think I said my committee</p> <p>18 members.</p> <p>19 Q. Okay. So it was other committee</p> <p>20 members that no longer were supportive of the</p> <p>21 community of interest plan; is that correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And your understanding is that</p> <p>24 that was because of outside information they</p> <p>25 received?</p>

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<p style="text-align: right;">Page 89</p> <p>1 A. I don't know what the 2 information they received. 3 Q. Okay. Do you understand -- 4 without revealing the contents of 5 conversations, do you have an understanding of 6 why the other senate members of the committee 7 no longer supported the community of interest 8 plan? 9 A. I don't know why -- why that 10 changed. 11 MR. ROSBOROUGH: All right. Can 12 we pull up Exhibit 13, please. 13 (Whereupon, Exhibit 13 was marked 14 for identification.) 15 Q. (By Mr. Rosborough) Senator 16 Livingston, do you recognize this document? 17 A. I have seen it before, yes, sir. 18 Q. Does this appear to be the 19 analysis Dr. Hood performed on the 20 Livingston 3 plan which was ultimately the 21 plan enacted in senate bill 5? 22 A. It doesn't identify itself as 23 that. But it looks familiar, yes, sir. 24 Q. Okay. And did you see Dr. Hood's 25 analysis before the plan passed the</p>	<p style="text-align: right;">Page 91</p> <p>1 plan, if at all? 2 A. Again, it's 46.6 percent 3 opportunity if you've got the right candidate 4 and the right funding. 5 Q. If this had been 43 percent 6 average, would that have been an opportunity 7 district in your mind? 8 A. If you're talking about CD-2, 9 average 43 percent? 10 Q. Yes. 11 A. I don't think so. 12 Q. Okay. Where do you sort of 13 draw -- where do you draw the line in 14 considering what average -- for a black 15 preferred candidate for prior elections, what 16 average would make this an opportunity 17 district? 18 A. I don't have a number for that, 19 sir. 20 Q. Nut somewhere above 43 percent, 21 but 46.6 percent qualifies; is that fair? 22 A. I think that would be fair, yes, 23 sir. 24 MR. ROSBOROUGH: Okay. All right. 25 We can take that down. Actually, can we pull</p>
<p style="text-align: right;">Page 90</p> <p>1 legislature during the special session? 2 A. Yes, sir. 3 Q. Okay. And under this analysis in 4 senate district -- I'm sorry -- in 5 congressional district 2 in the seven races 6 analyzed, black preferred candidates would 7 have lost all seven of those races; is that 8 correct? 9 A. I think that's what that shows, 10 yes, sir. 11 Q. Okay. And that also shows that 12 black preferred candidates would have lost by 13 an average of about a little under eight 14 points; is that correct? 15 A. I see on the percentage on 16 there. It's 46.6 out on the end of CD-2. 17 That's an average. 18 Q. Oh, I'm sorry. I think I meant to 19 say about seven points. It's 46.6 percent for 20 the black preferred candidate and 53.4 for the 21 white preferred candidate. Does that seem 22 accurate? 23 A. Yes, sir, I see that. 24 Q. Okay. How did this analysis 25 factor into your decision to support this</p>	<p style="text-align: right;">Page 92</p> <p>1 up Exhibit 14, please. 2 Q. Okay. Senator Livingston, this is 3 an article from the Alabama Reflector from 4 July 21st, 2023 with the title Alabama 5 Legislative Passes Controversial Congressional 6 Map. Have you seen this article before? 7 A. No, sir, I have not. 8 (Whereupon, Exhibit 14 was marked 9 for identification.) 10 Q. (By Mr. Rosborough) I'm asking 11 about this article because you are quoted in 12 it. If we could scroll down to, I believe, 13 page 3. There we go. 14 And you understand this article is 15 referring to the plan that ultimately passed, 16 which was Livingston 3 and ultimately passed 17 as senate bill 5? 18 A. Yes, sir. 19 Q. Okay. All right. 20 If you see, you are quoted in this 21 article as saying -- well, it refers to you, I 22 should say, as noting that republicans 23 prioritize compactness and communities of 24 interest which led to a 40 percent black 25 district. Livingston said there was not a</p>

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<p style="text-align: right;">Page 93</p> <p>1 conscious attempt to reach that number. And</p> <p>2 then you're specifically quoted as saying,</p> <p>3 There are three legs. And in the suit, the</p> <p>4 Court's order are -- those are two of the</p> <p>5 three legs. Does that appear to be an</p> <p>6 accurate quote?</p> <p>7 A. I don't remember saying that,</p> <p>8 but I'm sure they got it recorded.</p> <p>9 Q. Okay. Okay.</p> <p>10 What do you mean there were three</p> <p>11 legs, and in the suit, the Court's order and</p> <p>12 these are two of the three legs?</p> <p>13 A. I would assume that I'm talking</p> <p>14 about compactness and communities of</p> <p>15 interest.</p> <p>16 Q. Okay. And then what is the third</p> <p>17 leg, is that the Court's order?</p> <p>18 A. I would say that would be the --</p> <p>19 Q. Okay. And you talked a good</p> <p>20 amount about how compactness and communities</p> <p>21 of interest played into the map, but what</p> <p>22 about the Court's order, what role did that</p> <p>23 play for you?</p> <p>24 A. So the Court's order was to</p> <p>25 give -- to create two opportunity districts.</p>	<p style="text-align: right;">Page 95</p> <p>1 A. I think -- I think we made a</p> <p>2 valid attempt at making it fair and equal for</p> <p>3 everybody.</p> <p>4 Q. Okay. And he said, "I'm</p> <p>5 interested in keeping my majority." When you</p> <p>6 said, "We did the best we could," are you</p> <p>7 referring to passing what you think is a fair</p> <p>8 map while keeping a republican majority?</p> <p>9 A. I think we passed a fair map</p> <p>10 that satisfied the Court's requirements of</p> <p>11 opportunity districts.</p> <p>12 Q. And I understand that. I'm just</p> <p>13 wondering what -- how your response, "We did</p> <p>14 the best we could" in response to Speaker</p> <p>15 McCarthy's statement, "I'm interested in</p> <p>16 keeping my majority," what the relationship</p> <p>17 between those two are?</p> <p>18 A. I think you'd have to go back</p> <p>19 and ask whoever the -- wrote the article.</p> <p>20 I'm not sure they were in the same sentence</p> <p>21 or even meant to be tied together. But they</p> <p>22 are tied together there.</p> <p>23 Q. Okay. How, if at all, did helping</p> <p>24 Speaker McCarthy keep a republican majority in</p> <p>25 the house, how, if at all, did that play into</p>
<p style="text-align: right;">Page 94</p> <p>1 And I think that's what we tried to do with</p> <p>2 this.</p> <p>3 MR. ROSBOROUGH: I'd like to</p> <p>4 scroll down toward the bottom. Further down.</p> <p>5 Keep going. Okay. There we go. All right.</p> <p>6 Q. So toward the bottom of the</p> <p>7 article, the last -- these -- the last couple</p> <p>8 paragraphs on the page shown says, they say,</p> <p>9 The week-long session drew national attention.</p> <p>10 Republicans have a slim majority in the U.S.</p> <p>11 House that could shift with the loss of five</p> <p>12 seats. Livingston said Friday he had spoken</p> <p>13 with U.S. House Speaker Kevin McCarthy, R.</p> <p>14 California. He said, "I'm interested in</p> <p>15 keeping my majority," Livingston said. "That</p> <p>16 was basically his conversation. He's just</p> <p>17 telling us to do what we can do. We did the</p> <p>18 best we could."</p> <p>19 What do you recall about your</p> <p>20 conversation with Speaker McCarthy?</p> <p>21 A. Just a brief conversation that</p> <p>22 he expressed exactly what I said there.</p> <p>23 Q. Okay. And when you said at the</p> <p>24 end, "We did the best we could," what did you</p> <p>25 mean by that?</p>	<p style="text-align: right;">Page 96</p> <p>1 your efforts here?</p> <p>2 A. They really didn't play into our</p> <p>3 efforts. You know, they really didn't.</p> <p>4 Q. Okay. Are you just speaking for</p> <p>5 yourself, or are you speaking to other</p> <p>6 committee members?</p> <p>7 A. I would speak for myself there.</p> <p>8 Q. Okay. Would you say that you</p> <p>9 consider it fair and equal for black preferred</p> <p>10 candidates to win zero elections in</p> <p>11 congressional district 2 as drawn in the new</p> <p>12 plan?</p> <p>13 A. Would you repeat the question</p> <p>14 for me, please?</p> <p>15 Q. Would you consider it fair and</p> <p>16 equal for black preferred candidates to win</p> <p>17 zero elections in the newly drawn</p> <p>18 congressional district 2?</p> <p>19 A. No, sir, I don't think. I think</p> <p>20 they have an opportunity to win there.</p> <p>21 Q. And you think they have an</p> <p>22 opportunity to win even though all of the</p> <p>23 analysis you saw showed that they would have</p> <p>24 not have won a single election had that</p> <p>25 district been drawn in the past?</p>

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<p style="text-align: right;">Page 97</p> <p>1 A. I think if you go back and look 2 at the numbers that were in there, some of 3 those candidates were very weak. 4 Q. Were there any candidates run in 5 those races that you did do not consider very 6 weak? 7 A. I'd have to look at it again to 8 be honest with you. But, yes, sir, I think 9 there were some that were not weak. 10 Q. But those candidates that were not 11 weak nonetheless would have lost in the second 12 district; correct? 13 A. I think that's correct, yes, 14 sir. Again, I'd have to look at it. 15 Q. Okay. Which of those prior 16 candidates do you think were weak? 17 A. I don't remember, sir. I don't 18 see that in front of me. So I don't know 19 who -- that was '20 and -- 2018 and 2020 20 data; right? 21 Q. 2018 and 2020 data. I think there 22 might have been some 2016 data in the 23 analysis. 24 A. You know, just to be perfectly 25 honest with you, this was three weeks of, you</p>	<p style="text-align: right;">Page 99</p> <p>1 A. I would have withheld that. I'm 2 sorry. 3 Q. No, that's all right. 4 So if we look at district 2 in the 5 Senate 2020 race, that was the Doug Jones 6 versus Tommy Tuberville race; correct? 7 A. Yes, sir, I think so. 8 Q. Okay. And that was in a 9 presidential year where there's generally 10 higher turnout; is that correct? 11 A. Yes, sir. 12 Q. And in that race in this new 13 congressional district 2 under the enacted 14 plan, Senator Tuberville would have beaten 15 Doug Jones -- former Senator Jones by 16 4 percentage points; is that accurate? 17 A. Yes, sir, that's what I see. 18 Q. Okay. Would you consider Senator 19 Jones a weak candidate? 20 A. No, sir, I would not. 21 Q. Would you consider him to be more 22 well-funded than most other democratic 23 candidates in recent years? 24 A. Yes, sir. 25 Q. So despite being well-known, a</p>
<p style="text-align: right;">Page 98</p> <p>1 know, trying to get this together and to get 2 it to the Court, so... 3 MR. ROSBOROUGH: Okay. We can 4 pull this down. We're getting close -- we're 5 getting close to wrapping up on my end. 6 Q. So let me just confirm then, you 7 didn't -- can you think of any candidates in 8 the past other than Doug Jones who you would 9 consider -- well, let me rephrase that. 10 One of those elections was Doug 11 Jones, correct, where he lost to Senator 12 Tuberville in 2020 and would have lost in that 13 second congressional district under the 14 analysis; is that correct? 15 A. Well, some of the analysis -- it 16 probably wasn't on this map, but some of the 17 analysis showed him winning the second 18 congressional district. 19 Q. Well, let's pull back up -- 20 A. Maybe not in that one. 21 Q. Yeah. Let's just go ahead and 22 pull back up really quickly Exhibit 13 if you 23 don't mind. It will be easy. Again, I'm 24 really not trying to do this as a memory test. 25 I know it was a fast session.</p>	<p style="text-align: right;">Page 100</p> <p>1 former incumbent, and well-funded, Senator 2 Jones would have lost to Senator Tuberville by 3 4 points in this district; correct? 4 A. Yes, sir. 5 MR. ROSBOROUGH: Okay. You can 6 take that down. Okay. Can we just -- I'm 7 getting close to wrapping up, Senator 8 Livingston. I appreciate your time. I've got 9 a few more minutes. 10 Can we please pull up Exhibit 15? 11 Q. Okay. Senator Livingston, do you 12 recognize this document? 13 (Whereupon, Exhibit 15 was marked 14 for identification.) 15 THE WITNESS: Yes, sir. 16 Q. (By Mr. Rosborough) And what is 17 it? 18 A. I think that's the final bill 19 that was passed SB-5 as enacted and stamped. 20 And I think if I remember from earlier 21 conversation has got the governor's signature 22 on the bottom of the front page. 23 MR. ROSBOROUGH: Okay. All right. 24 And if we could scroll up to, I think it's 25 maybe the second page. Scroll up one page</p>

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<p style="text-align: right;">Page 101</p> <p>1 more. There we go.</p> <p>2 Q. Okay. So section one of the bill</p> <p>3 sets out a number of -- well, line 15 right</p> <p>4 there says, "The legislature finds and</p> <p>5 declares the following." And then it sets out</p> <p>6 a number of statements over the next several</p> <p>7 pages. If you scroll down all the way until</p> <p>8 we get to section 2, I believe, which is an</p> <p>9 actual description of the districts; is that</p> <p>10 correct?</p> <p>11 A. I'll take your word for it.</p> <p>12 It's very difficult to see here.</p> <p>13 Q. Okay. Are you generally familiar</p> <p>14 with the fact that there are what are titled</p> <p>15 legislative findings that take up about, you</p> <p>16 know, five or so pages in the bill?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. And do you recall in your</p> <p>19 responses to the interrogatories that when you</p> <p>20 were asked to identify each individual and/or</p> <p>21 entity who participated in the drafting of the</p> <p>22 statement of legislative intent accompanying</p> <p>23 the congressional districting map, you said</p> <p>24 all information and belief, Eddie LaCour, do</p> <p>25 you recall that?</p>	<p style="text-align: right;">Page 103</p> <p>1 over. I am happy to go slower if you need.</p> <p>2 Just let us know. But do these appear to be</p> <p>3 the talking points that you just mentioned?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay. Who prepared these talking</p> <p>6 point?</p> <p>7 A. I think they came from Eddie</p> <p>8 LaCour.</p> <p>9 Q. Okay. And do you recall when you</p> <p>10 received them?</p> <p>11 A. That, I do not remember, no,</p> <p>12 sir.</p> <p>13 Q. Do you recall discussing these</p> <p>14 talking points with anyone?</p> <p>15 A. No, sir.</p> <p>16 Q. Did you rely on these talking</p> <p>17 point during legislative hearings?</p> <p>18 A. Some of them I did, yes, sir.</p> <p>19 MR. ROSBOROUGH: Okay. Okay.</p> <p>20 Give me one sec. I'm just going to take one</p> <p>21 sec if you don't mind the awkward the pause.</p> <p>22 Okay. We can take that down.</p> <p>23 If we can just take a five-minute</p> <p>24 break. I think that's probably all the</p> <p>25 questions I have. But I just want a second to</p>
<p style="text-align: right;">Page 102</p> <p>1 A. Yes, sir.</p> <p>2 Q. When -- are these sections of the</p> <p>3 bill what you were referring to in that</p> <p>4 answer?</p> <p>5 A. Yes, sir.</p> <p>6 MR. ROSBOROUGH: All right. We</p> <p>7 can -- well, let me just -- we can take that</p> <p>8 down. That's fine.</p> <p>9 Q. Do you -- without revealing any</p> <p>10 conversations with counsel, do you have any</p> <p>11 understanding of why those findings were</p> <p>12 included in the bill?</p> <p>13 A. I do not, sir.</p> <p>14 Q. Okay. Senator Livingston, did</p> <p>15 you -- do you recall preparing or receiving</p> <p>16 any talking points regarding the enacted plan</p> <p>17 or any draft plans during the special session?</p> <p>18 A. Yes, sir.</p> <p>19 MR. ROSBOROUGH: Okay. Can we</p> <p>20 pull up Exhibit 16, please?</p> <p>21 (Whereupon, Exhibit 16 was marked</p> <p>22 for identification.)</p> <p>23 Q. (By Mr. Rosborough) Okay.</p> <p>24 And if we can just sort of slowly</p> <p>25 scroll down and give you a chance to look</p>	<p style="text-align: right;">Page 104</p> <p>1 confer with my cocounsel. Does that work? We</p> <p>2 can take five and come back at 3:27.</p> <p>3 MR. WALKER: Davin, would you mind</p> <p>4 if we took a little bit longer than five, say</p> <p>5 maybe ten or so minutes?</p> <p>6 MR. ROSBOROUGH: Oh, sure, that's</p> <p>7 fine. We can take ten.</p> <p>8 MR. WALKER: Okay.</p> <p>9 MR. ROSBOROUGH: Well, actually,</p> <p>10 how about this? You know what, I feel pretty</p> <p>11 comfortable those are all of my questions. So</p> <p>12 let me see if Mr. Posimato from the Caster</p> <p>13 plaintiffs or anyone else wants to -- anyone</p> <p>14 else has any questions because it may be -- if</p> <p>15 not, we can just end this and take a longer</p> <p>16 break.</p> <p>17 MR. POSIMATO: This is Joe</p> <p>18 Posimato from the Caster plaintiffs. The</p> <p>19 Caster team doesn't have any further</p> <p>20 questions.</p> <p>21 MR. DAVIS: Nothing from the</p> <p>22 secretary of state.</p> <p>23 COURT REPORTER: Okay. No other</p> <p>24 questions, Counsel?</p> <p>25 MR. ROSBOROUGH: Nothing else from</p>

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1 me.

2 COURT REPORTER: Okay.

3 THE VIDEOGRAPHER: Counsel, is it

4 going to be the same orders for this witness?

5 MR. ROSS: Same orders for this

6 witness, yes, thank you.

7 MR. POSIMATO: For the Caster

8 plaintiffs, I think my colleague had ordered a

9 transcript, but not a rush transcript from the

10 last deposition. We would actually like to

11 amend that. Can we actually have rush

12 transcript for the Milligan plaintiffs for all

13 of these depositions?

14 COURT REPORTER: Yes, sir.

15 MR. POSIMATO: Thank you so much.

16 COURT REPORTER: Okay. You can

17 take us off, I believe, Bailey.

18 THE VIDEOGRAPHER: No further

19 questions. The time is 2:24 p.m. on August

20 9th, 2023. We are going off the record.

21 (The deposition concluded at 2:24 p.m.)

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1 C E R T I F I C A T E

2

3 STATE OF ALABAMA)

4 CALHOUN COUNTY)

5

6 I hereby certify that the above

7 proceedings were taken down by me and

8 transcribed by me using computer-aided

9 transcription, and that the above is a true

10 and correct transcript of the said proceedings

11 given by said witness.

12 I further certify that I am neither

13 of counsel nor of kin to the parties to the

14 action, nor am I in anywise interested in the

15 result of said cause.

16 I further certify that I am duly

17 licensed by the Alabama Board of Court

18 Reporting as a Certified Court Reporter as

19 evidenced by the ACCR number found below.

20

21 COMMISSIONER - NOTARY PUBLIC

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23 *Cindy C. Jenkins, CCR*

24 CINDY J. JENKINS, CSR

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