

2024 Oct-11 AM 01:03

U.S. DISTRICT COURT

N.D. OF ALABAMA

In The Matter Of:

Evan Milligan,et al v. John H.Merrill, et al.

Jim McClendon

December 17, 2021

US Legal

Evan Milligan,et al v. John H.Merrill, et al.

IT IS FURTHER STIPULATED AND AGREED that the signature to and reading of the deposition by the witness is waived, the deposition to have the same force and effect as if full compliance had been had with all laws and rules of Court relating to the taking of depositions.

IT IS FURTHER STIPULATED AND AGREED that it shall not be necessary for any objections to be made by counsel to any questions, except as to form or leading questions, and that counsel for the parties may make objections and assign grounds at the time of the trial, or at the time said deposition is offered in evidence, or prior thereto.

Page: 2

Evan Milligan,et al v. John H.Merrill, et al.

Jim McClendon
12/17/2021

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

EVAN MILLIGAN, et al.,)
) CIVIL CASE NO.
Plaintiffs,) 2:2021-CV-01530-AMM
VS.) VIDEO DEPOSITION OF:
JOHN MERRILL, et al.,) JAMES MCCLENDON
)
Defendants.)

S T I P U L A T I O N S

IT IS STIPULATED AND AGREED, by and between the parties through their respective counsel, that the deposition of:

JAMES MCCLENDON,
may be taken before LeAnn Maroney, Notary Public, State at Large, at the law offices of Balch & Bingham, 105 Tallapoosa Street, Montgomery, Alabama, 36104, on December 17, 2021, commencing at 1:57 p.m.

Page: 1

Evan Milligan,et al v. John H.Merrill, et al.

Jim McClendon
12/17/2021

A P P E A R A N C E S

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Page: 3

21-cv-01531
11/12/2024 Trial
Plaintiffs Exhibit 389

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Page: 4

I N D E X

MS. SADASIVAN: 9-103
MR. OSHER: 104-111
MR. DAVIS: 111-114

E X H I B I T L I S T

	PAGE
Plaintiff's Exhibit 1 - (Talk points)	35
Plaintiff's Exhibit 2 - (2011 reapportionment guidelines)	36
Plaintiff's Exhibit 3 - (Montgomeryadvertiser.com)	47
Plaintiff's Exhibit 4 - (Public hearing schedule)	61
Plaintiff's Exhibit 5 - (2021 reapportionment guidelines)	64
Plaintiff's Exhibit 6 - (Transcript of October 26, 2021)	76
Plaintiff's Exhibit 7 - (Transcript of November 3, 2021)	94
Plaintiff's Exhibit 8 - (Hall request for additional meetings)	100

Page: 6

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ALSO PRESENT:

Paige Ali, Videographer

Page: 5

I, LeAnn Maroney, a Court Reporter of
Birmingham, Alabama, and a Notary Public for the
State of Alabama at Large, acting as commissioner,
certify that on this date, pursuant to the Federal
Rules of Civil Procedure and the foregoing
stipulation of counsel, there came before me on
December 17, 2021, JAMES McCLENDON, witness in the
above cause, for oral examination, whereupon the
following proceedings were had:

* * * * *

THE VIDEOGRAPHER: This marks the
beginning of the deposition of Jim McClendon in the
matter of Evan Milligan, et al., versus John H.
Merrill, et al., Civil Case Number 2:21-CV-01530-AMM
filed in the United States District Court for the
Northern District of Alabama. The date is December
17, 2021. The time is 1:57 p.m.

All attorneys present, will you please
state your names and whom you represent.

MR. DAVIS: Jim Davis, Alabama Attorney
General's Office, for Secretary of State John
Merrill.

MR. WALKER: Dorman Walker, Balch &
Bingham, for Senator Jim McClendon.

MS. SADASIVAN: This is Kathryn

Page: 7

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Sadasivan for plaintiffs Evan Milligan, Shalela
2 Dowdy, Letetia Jackson, Greater Birmingham
3 Ministries, and the NAACP of Alabama.
4 I'm still having trouble hearing you
5 all, though. The audio is going out. Are you able
6 to move the place where -- anything towards the
7 witness, a phone, audio of some sort?
8 (Discussion held off the record.)
9 THE VIDEOGRAPHER: Okay. The attorneys
10 that are on Zoom, if you'll do your introductions.
11 MR. TURRILL: Michael Turrill of Hogan
12 Lovells on behalf of the Milligan plaintiffs.
13 MR. ROSS: Deuel Ross for the Milligan
14 plaintiffs.
15 MR. OSHER: Dan Osher for the Caster
16 plaintiffs.
17 MS. EBENSTEIN: Julie Ebenstein for the
18 Milligan plaintiffs.
19 THE VIDEOGRAPHER: Do you want to swear
20 him in?
21 JAMES MCCLENDON,
22 having been duly sworn, was examined and testified
23 as follows:
24 THE REPORTER: Usual stipulations?
25 MR. WALKER: Meaning that the only

Page: 8

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. And your first name, as well, please.
2 A. J-A-M-E-S.
3 Q. Have you ever been deposed before?
4 A. Yes.
5 Q. When?
6 A. Roughly ten years ago during
7 redistricting last time.
8 Q. And what was your role in the
9 litigation?
10 A. I was house chairman of redistricting at
11 that time.
12 Q. Were you a defendant?
13 A. Yes.
14 Q. Were you -- have you been involved in
15 any other cases?
16 A. Any? No.
17 Q. You are sworn and under oath. Do you
18 understand that for purposes of my questioning, you
19 must testify truthfully and as completely as
20 possible as though we were before a judge in a
21 courtroom?
22 A. Yes.
23 Q. Is there any reason you cannot give
24 truthful and complete testimony today?
25 A. No.

Page: 10

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 objections that need to be made are to the form of
2 the question. Yes, Katherine?
3 MS. SADASIVAN: Yes.
4 THE VIDEOGRAPHER: We are off the
5 record. The time is 1:59 p.m.
6 (Recess was taken.)
7 THE VIDEOGRAPHER: We are back on the
8 record. The time is 2:04 p.m.
9 EXAMINATION BY MS. SADASIVAN:
10 Q. Good afternoon, Mr. McClendon. My name
11 is Kathryn Sadasivan and I work for the NAACP Legal
12 Defense & Educational Fund. I represent the
13 plaintiffs in this case, Milligan versus Merrill.
14 Thank you for making yourself available for today's
15 deposition.
16 Do you understand that you're here today
17 because you've been served with a notice of
18 deposition and you are a defendant in Milligan
19 versus Merrill in your official capacity as cochair
20 of the Alabama permanent legislative committee on
21 reapportionment?
22 A. I do.
23 Q. Before going any further, can you please
24 state and spell your name for the record?
25 A. James H. McClendon, M-c-C-L-E-N-D-O-N.

Page: 9

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. Are you taking any medication that might
2 affect your ability to understand the questions that
3 I ask or provide answers to those questions?
4 A. No.
5 Q. Do you have any condition that would
6 affect your ability to understand the questions that
7 I ask and provide answers to the questions?
8 A. No.
9 Q. Do you understand that today's
10 deposition is being conducted via web
11 videoconference?
12 A. Yes.
13 Q. Do you understand that a court reporter
14 is transcribing this deposition, meaning that they
15 are writing down everything that you, your counsel,
16 and I say today?
17 A. Yes.
18 Q. It's important that all of your answers
19 are verbal. This will allow the court reporter to
20 record our statements. The court reporter won't be
21 able to record gestures or nodding. Do you
22 understand?
23 A. I do.
24 Q. Likewise, it's important that we don't
25 speak over one another. I will wait until you

Page: 11

21-cv-01531
11/12/2024 Trial
Plaintiffs Exhibit 389

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 finish your answer, and I ask that you please wait
2 until I finish my question before answering. Do you
3 understand?
4 A. I do.
5 Q. If you don't understand a question that
6 I ask, please just let me know, and I'll rephrase
7 it. If at any point you recall additional
8 information that is responsive to a question that I
9 asked you earlier, please let me know, and I will
10 allow you to clarify the record. Do you understand?
11 A. I do.
12 Q. Please do not guess or assume when
13 answering. Be sure to state only that which you
14 know to be true based on your personal knowledge.
15 Will you do that?
16 A. Yes.
17 Q. You may hear your attorney, Mr. Walker,
18 object to a question from time to time. His
19 objections are being made for the record, and you
20 are still required to answer my question unless you
21 are instructed by your attorney not to answer. Do
22 you understand?
23 A. I'm not sure about that. Maybe say it
24 again. Let me hear you say that one more time.
25 Q. You may hear your attorney object to a

Page: 12

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. Do you have any -- if you don't have any
2 documents with you, please don't look at any
3 documents other than those that I will give you. Do
4 you understand that?
5 A. I do.
6 Q. Thank you. Sorry for all the
7 preparatory language.
8 Finally, if you need a break at any
9 time, please just let me know. If there's a
10 question pending, I just ask that you answer that
11 question before going on a break. Do you
12 understand?
13 A. I do.
14 Q. Thank you.
15 I'm going to ask you some background
16 questions to get to know you a little bit better.
17 What is your date of birth?
18 A. 1-10-43.
19 Q. That's January 10, 1943?
20 A. Correct.
21 Q. What's your address?
22 A. 361 Jones Road, Springville, Alabama.
23 Q. And your telephone number?
24 A. (205)999-8096.
25 Q. Is that a mobile phone number?

Page: 14

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 question from time to time throughout this
2 deposition. Those objections are made largely for
3 the record. And you understand you are still
4 required to respond to my question unless you are
5 instructed by your attorney not to?
6 A. Okay.
7 Q. Do you understand that?
8 A. I've got it.
9 Q. Is that a yes?
10 A. Yes.
11 Q. Thank you.
12 Since we're conducting this deposition
13 remotely and we're not together in the same room, I
14 ask that you please keep your cell phone off unless
15 we are on a break. Can you do that?
16 A. I understand.
17 Q. Please don't refer to any documents or
18 other materials during our conversation today. Will
19 you do that?
20 A. Did you say don't refer to any materials
21 or documents today? Is that what you said?
22 Q. Do you have any documents with you?
23 A. I do not.
24 MR. WALKER: Oh, did you mean don't look
25 at any documents?

Page: 13

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. Correct. Yes, it is.
2 MR. WALKER: Kathryn, can I ask that
3 this personal information be redacted with anything
4 you file with the court?
5 Q. Do you have any other phone numbers?
6 A. Well, I do have a phone in my office in
7 the Alabama state house, but I'm not sure what the
8 number is.
9 Q. Do you have an email account?
10 A. I do. I have two.
11 Q. And what are they?
12 A. My personal email is
13 jimmcc@windstream.net. My senate email is
14 jim.mcclendon@alsenate.gov.
15 Q. Do you have any personal social media
16 accounts?
17 A. Facebook, yes.
18 Q. You just have a Facebook account?
19 A. Correct.
20 Q. No Twitter?
21 A. No Twitter.
22 Q. And where were you born?
23 A. Mobile, Alabama.
24 Q. And where did you go to high school?
25 A. Springville, Alabama.

Page: 15

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. Where did you go to college?

2 A. My undergraduate degree is from

3 Birmingham Southern College in Birmingham, and my

4 doctorate is from the University of Houston,

5 Houston, Texas.

6 Q. And what is your doctorate in?

7 A. Optometry.

8 Q. And what courses did you take at

9 Birmingham Southern?

10 A. Just pretty much premed-type courses.

11 Q. And have you studied anywhere else?

12 A. No, other than continuing education

13 courses required to maintain my optometry license.

14 Q. So you are an optometrist?

15 A. Correct. Yes, I am.

16 Q. Have you -- are you married?

17 A. I am.

18 Q. How long have you been married?

19 A. 26 years.

20 Q. Congratulations.

21 Do you have kids?

22 A. I do.

23 Q. How many?

24 A. One child.

25 Q. One child. And how old are they?

Page: 16

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. I didn't quite understand. Did you say

2 will you read or did you read?

3 Q. Did you read.

4 A. I have not read it, no.

5 Q. Do you know what the case is about?

6 A. Yes. This case has to deal with the

7 congressional districts.

8 Q. Are you represented by counsel today?

9 A. I am.

10 Q. Who is your counsel?

11 A. Dorman Walker.

12 Q. And how did you prepare for this

13 deposition today?

14 A. I came in yesterday and we met for a

15 couple of hours and we sort of talked about how this

16 works and what to expect. But that was the only

17 preparation.

18 Q. And who is "we"?

19 A. Jim Davis was here and Chris --

20 Representative Pringle was here and I was here. So

21 it was four of us present.

22 Q. So you -- the only preparation you did

23 for this deposition was to meet with Chris Pringle,

24 Jim Davis, and Mr. Walker yesterday for a few hours?

25 A. That is correct.

Page: 18

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. She is 50.

2 Q. And what does she do for a living?

3 A. A school teacher.

4 Q. In Alabama?

5 A. Yes.

6 Q. Where?

7 A. In the Jefferson County system.

8 Q. And where do you work?

9 A. I'm a -- I'm retired from optometry.

10 Q. So you are not employed currently?

11 A. As an optometrist, no, I am not.

12 Q. Are you employed anywhere currently?

13 A. Only as an Alabama senator.

14 Q. So you're working as an Alabama senator?

15 A. Well, I am a senator, and we do work

16 from time to time.

17 Q. Are you paid?

18 A. Yes.

19 Q. Do you know why you're here today?

20 A. Yes.

21 Q. Why?

22 A. A lawsuit concerning redistricting that

23 we just completed in the Alabama legislature.

24 Q. Did you read the complaint in the case

25 in which you're sitting for a deposition today?

Page: 17

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. Did you review any documents?

2 A. Yes.

3 Q. Which documents?

4 A. There were two. Actually, I can't say I

5 reviewed them. I looked at the cover. One of them

6 had to do with the notes -- the bullet points we

7 used on the floor, in my case on the floor of the

8 senate.

9 And the other one -- I can't even

10 remember what the other one was. But I gave them

11 back to my attorney. I didn't take them home and

12 read them or study them.

13 Q. So I am going to try to drop in the chat

14 a document that I'll ask the court reporter to mark

15 as Exhibit 1. And I can show it on my screen, as

16 well.

17 Is this the document that you reviewed

18 in advance of your deposition today? Let me share

19 my screen.

20 Senator McClendon, is this the document

21 that you were referring to?

22 A. I really can't read that. I see talking

23 points -- okay. Scroll it up and let me see it.

24 Well, that looks similar. I don't know if that's

25 exactly the same document. But that's sort of the

Page: 19

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 format that was used.

2 Q. I'll represent that this was produced in

3 this litigation and that I have given it to the

4 court reporter and hopefully you also have a copy.

5 And what was this document?

6 A. What you and I were just discussing was

7 talking points that I was provided by our attorney

8 when the issue of the congressional map came before

9 the senate as a body.

10 Q. And who gave you this document?

11 A. Pardon?

12 Q. Who gave that document to you?

13 A. One of the staff members of the

14 redistricting -- not committee, but the

15 redistricting department there in the state house.

16 Q. What is the difference between the

17 redistricting committee and the redistricting

18 department?

19 A. Well, the redistricting office is

20 staffed by state employees. And the redistricting

21 committee is composed of elected senators and

22 representatives.

23 Q. So you were given this document when?

24 A. Well, prior to it going on the floor for

25 debate, and not much sooner than that.

Page: 20

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 been the standing committee that this bill went to

2 after it came to the senate from the house.

3 Q. You said you reviewed the talking points

4 that we discussed. And what else before this

5 deposition?

6 A. What did I review? Well, no. The

7 talking points was the -- that was the purpose of

8 having the talking points, is I had a summary of the

9 main points that needed to be shared with the

10 standing committee members so they would be able to

11 vote however they wanted to.

12 Q. I'm sorry. I meant -- just going back,

13 what documents other than this talking points did

14 you look at to prepare for this deposition today?

15 A. Well, I looked at a number of documents

16 during the process of the bill going through the

17 redistricting committee. But there wasn't anything

18 in particular that I did to review that prior to the

19 meeting of the standing committee. They were all

20 summarized. So --

21 Q. For this deposition, though, you

22 mentioned that you met yesterday with Mr. Davis,

23 Mr. Walker, and Mr. Pringle and that you looked at

24 several documents.

25 A. Yes.

Page: 22

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. Prior to what going on the floor for

2 debate?

3 A. The congressional bill.

4 Q. And do you remember when that was?

5 MR. WALKER: Hang on. Kathryn, when you

6 say "this document," are you talking about Talking

7 Points for Likely Issues No. 1? Or are you talking

8 about the collection of talking points?

9 Q. Well, does that change your answer?

10 A. Well, I don't think it does. I got that

11 prior to the bill going on the floor for debate. In

12 fact, I may have gotten it prior to the committee --

13 the standing committee meeting. That would -- that

14 would make sense.

15 Q. And what standing committee meeting are

16 you talking about?

17 A. The bills that -- the redistricting

18 committee is considered an interim committee. And

19 the bills that come out of interim committees must

20 go to a standing committee before they can go to

21 rules in order to get on the floor.

22 So there was a standing committee --

23 which happened to be general fund -- that was

24 handling not only a general fund bill but all the

25 redistricting bills, as well. So that would have

Page: 21

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. Besides the talking points, what other

2 documents did you look at?

3 A. It may have been a summary of this

4 lawsuit. But I'm not -- Kathryn, I'm really not --

5 I really don't remember what it was. I didn't pay

6 much attention to it.

7 Q. You say "a summary of this lawsuit."

8 Would you mind giving me a summary of this lawsuit?

9 A. I can't do it. Sorry. I wish I could.

10 Q. You testified earlier that you were a

11 party to a lawsuit in the last redistricting cycle;

12 is that correct?

13 A. Correct.

14 Q. Was that a redistricting case?

15 A. Yes.

16 Q. And you were deposed?

17 A. Yes.

18 Q. Did you testify at trial?

19 A. I'm sorry. I didn't understand you.

20 Q. Sorry. Did you testify at trial?

21 A. Yes.

22 Q. And what was that case about?

23 A. That case, I believe, was -- legislative

24 was the target, not congressional. The issue was --

25 Q. And when you say --

Page: 23

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. I'm sorry.

2 Q. I'm sorry.

3 A. It's my turn?

4 My point is that case was not

5 congressional. That had do with house and senate

6 districts.

7 Q. And when you say "the target," you mean

8 what?

9 A. That the object, the goal of the case

10 was to challenge the way house and senate districts

11 were drawn.

12 Q. And do you remember under what law those

13 were challenged?

14 A. No.

15 Q. So let's talk about your career in

16 public service. When were you first elected to

17 public office?

18 A. 2001.

19 Q. And what were you elected -- where were

20 you elected?

21 A. What or where? Which one do you want?

22 I was elected --

23 Q. What district (inaudible.)

24 A. Alabama house of representatives, House

25 District 50.

Page: 24

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 house district 50?

2 A. I served three four-year terms. I went

3 into office -- well, I went into office in 2021. So

4 three four-year terms.

5 Q. And are you currently a member of the

6 house of representatives?

7 A. No. I'm a member of the Alabama senate.

8 Q. And when were you first elected to the

9 Alabama senate?

10 A. It must have been '14. Yeah, 2014.

11 Q. Prior to --

12 A. Your turn.

13 Q. I'm so sorry. I said don't cut each

14 other off, and I'm cutting you off. I'm sorry.

15 A. I answered your -- 2014, which is the

16 answer to the question.

17 Q. Thank you. Sorry again.

18 What legislative committees have you

19 served on during your very long tenure in the

20 Alabama legislature?

21 A. Well, in the senate, I'm currently on

22 the health committee, I am on the general fund

23 committee, I am on the education trust fund

24 committee, and I am on education policy. And I

25 chair the health committee.

Page: 26

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. And did you run as a -- with the support

2 of a political party?

3 A. Well, there was a primary with

4 republican -- I don't think the republican party

5 endorsed any of the republican candidates.

6 Q. You ran as a republican?

7 A. Yes, I did.

8 Q. Why did you run as a republican?

9 A. Why did I run as a republican? Is that

10 what you said?

11 Q. Yes, sir.

12 A. Because I am a republican.

13 Q. What does it mean to be a republican?

14 A. I would say the first word that comes to

15 mind would be "conservative." And that would be

16 socially conservative and fiscally conservative.

17 Q. And when you say "socially

18 conservative," what do you mean?

19 A. It has to do with policies that we make

20 that are conservative in nature.

21 Q. And what is a policy that is

22 conservative in nature?

23 A. I would say one of the things that

24 conservatives believe in is law and order.

25 Q. Okay. So how long did you serve in

Page: 25

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. Those are all of the committees that you

2 have ever served on?

3 A. No. No. In the house, I served on

4 several different committees over three terms. And,

5 of course, I served on redistricting, as well, ten

6 years ago and became -- and was house chair of

7 redistricting.

8 Q. And when you say "redistricting," you

9 mean the permanent -- the Alabama legislative

10 committee on reapportionment?

11 A. That's exactly what I mean.

12 Q. Okay. So if I say redistricting for the

13 reapportionment committee or if you say those

14 things, you mean the permanent committee on

15 reapportionment?

16 Is that a yes?

17 A. You know, there's a little difference in

18 there. During the interim years when there's not

19 redistricting activity going on, there is a

20 permanent redistricting committee composed of three

21 members of the house and three of the senate.

22 And then as we approach the

23 redistricting time period where the activity goes

24 up, then -- then it converts over to 11 and 11 for

25 the actual process.

Page: 27

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. That makes sense. So it's the same
2 committee, just getting bigger or larger or smaller
3 based on the time period?
4 A. Correct.
5 Q. What was your role in Alabama's 2011
6 redistricting process?
7 A. I was house chairman.
8 Q. And what are the responsibilities of the
9 house chairman for redistricting?
10 A. Well, part of -- essentially part of a
11 leadership team that makes preparations for the
12 actual process, meets with the attorney and can meet
13 with the person that draws the maps, and begins
14 discussions and review, for example, of our
15 guidelines to see if they need to be updated or
16 changed, and also help time the scheduling of the
17 actual meeting of the full redistricting committee.
18 Q. Do you have any other responsibilities?
19 A. No. I think that pretty well summarizes
20 it. I'm sure there's some other things that we do
21 that are not big items. But I think that summarizes
22 the things worth discussing.
23 Q. And when you said you meet with the
24 attorney and you -- as the cochair, you meet with
25 the attorney and you meet with the person who draws

Page: 28

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 elected members of this committee know what the law
2 is and what -- and keep us up to date on recent
3 court cases so we can do our best to be in
4 compliance with what the law says and what the
5 courts have subsequently interpreted.
6 Q. So as the house chair of the
7 reapportionment committee, what were -- what was
8 your role in those meetings?
9 A. Well, I guess my role was to be there
10 and to make sure that we stay -- are we -- I guess
11 we're talking generically here. We're not talking
12 about 2011 or 2021. Are we just talking about being
13 a chair, a redistricting chair? Is that what the
14 discussion is? Or are we talking about a certain
15 time period?
16 Q. So when I asked you what your
17 responsibilities were as house chair of the
18 reapportionment committee, you said, among other
19 things, you meet with the attorney, you meet with
20 the person who draws the map, meeting with the
21 reapportionment committee. And I'm just asking what
22 you meant by that as your role.
23 What was your role in those meetings
24 with the attorney and with the drawer?
25 A. To discuss the -- one of the issues, of

Page: 30

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 the map, what do you -- what do you do during those
2 meetings? Or what is your role during those
3 meetings?
4 MR. WALKER: I'll instruct you not to
5 discuss anything that I may have told you or you may
6 have told me during those meetings.
7 A. Yes, ma'am. Do you mind me correcting
8 you on a phrase?
9 Actually, if you look at the law, there
10 is a house chair and a senate chair. They are not
11 cochairs, although that seems to be a well-kept
12 secret. But now you know.
13 So now --
14 Q. The secret is out.
15 So as the house chair of the
16 redistricting committee, what do you mean -- what
17 was your responsibility with respect to your
18 meetings with the attorney and the meetings with the
19 person who draws the map?
20 MR. WALKER: Same instruction.
21 THE WITNESS: Okay. Well, stop me if I
22 go astray here.
23 MR. WALKER: Okay.
24 A. Of course, probably the single most
25 important role of the attorney is to help the

Page: 29

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 course, is the time schedule on when we can carry
2 out the duties and when we need to carry out the
3 duties. And then another thing has to do with
4 making sure that we stay in compliance with the
5 courts and the law and recent court cases.
6 Q. Who selected the attorney?
7 MR. WALKER: At what time are you
8 talking about?
9 MS. SADASIVAN: In 2011.
10 A. I do not know the answer to that.
11 Q. Did you have any involvement in the
12 selection of the attorney --
13 A. No.
14 Q. -- for the reapportionment committee?
15 A. No.
16 Q. Did you have any role in the selection
17 of the demographer as the house chair of the
18 reapportionment committee?
19 A. No.
20 Q. Do you know who made the decision?
21 A. I do not.
22 Q. How were you selected to serve as the
23 house chair of the reapportionment committee?
24 A. By the speaker of the house.
25 Actually --

Page: 31

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. Who was that?

2 A. -- I was -- he selected me to be on the

3 committee. And then the house members on that

4 committee elected the house chair.

5 Q. I see. So you were elected by the other

6 house members of the reapportionment committee to

7 serve as the house chair?

8 A. Correct.

9 Q. And who was the senate chair of the

10 reapportionment committee in 2011?

11 A. Gerald Dial.

12 THE REPORTER: Gerald who?

13 A. D-I-A-L.

14 Q. And was the starting point -- what was

15 the starting point for drawing the congressional

16 maps in 2011?

17 A. The starting point would be the existing

18 lines.

19 Q. What existing lines?

20 A. The congressional lines that were

21 current at that time.

22 Q. And how did you go about deciding how to

23 update those lines based on the census data in 2011?

24 A. Actually, I didn't make those decisions.

25 Q. Who did?

Page: 32

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. Yes.

2 Q. Was it more than two meetings?

3 A. I'm sorry? What was the last word you

4 said? It came out fuzzy.

5 Q. Was it more than two meetings?

6 A. I'm just guessing. And I can't answer

7 that question because I don't remember.

8 Q. What was the role of the reapportionment

9 committee in the map drawing process in 2011?

10 A. Are we talking congressional maps?

11 Q. Yes.

12 A. The role of the reapportionment

13 committee was to take the map that was submitted,

14 that was put together by the -- with the approval of

15 the congressional delegation, and to approve or

16 disapprove that map and submit it for introduction

17 to the legislature.

18 Q. And how did the committee go about

19 approving or disapproving of the map drawn?

20 A. A roll call vote.

21 Q. Were members given any guidance on how

22 to vote?

23 A. I don't quite understand that -- that

24 question, were they given guidance.

25 Q. Any information on how to vote or how to

Page: 34

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. The map drawer met with and talked to

2 the members of the congressional delegation. And,

3 of course, once we had the data, the population

4 numbers, then they knew if a district needed to have

5 an increase or a decrease in population.

6 Q. Did the legislature conduct public

7 hearings in the redistricting process?

8 A. Yes.

9 Q. Following the (inaudible.)

10 A. What was the last thing you said?

11 Following?

12 Q. The 2010 census.

13 A. Yeah, the -- correct, we did have public

14 hearings.

15 Q. How many?

16 A. 22.

17 Q. And when did those hearings occur?

18 A. I just -- I do not remember. I don't

19 remember those dates.

20 Q. How many meetings did the

21 reapportionment committee hold in 2011?

22 A. I can't tell you exactly. I don't know

23 the exact number. I don't -- I don't remember the

24 exact number.

25 Q. Was it more than one?

Page: 33

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 look at a map?

2 A. Well, the map and the data was put

3 before them at the committee meeting.

4 Q. I'm dropping into the chat and I will

5 ask the court reporter to mark as McClendon Exhibit

6 2 --

7 MR. WALKER: Kathryn, what was Exhibit

8 1? I'm sorry. Was that the talking points?

9 MS. SADASIVAN: Yes, sir.

10 MR. WALKER: Okay. Let me -- let me --

11 I'm your secretary in this. So let me take care of

12 it.

13 MS. SADASIVAN: Oh, thank you so much,

14 Dorman. I'm sorry about that. I appreciate it.

15 MR. WALKER: We're a full-service law

16 firm.

17 MS. WELBORN: I'm happy to play the

18 role.

19 MR. WALKER: Well, I've got them spread

20 out over here.

21

22 (Plaintiff's Exhibit 1 was

23 marked for identification.)

24

25 Q. Senator McClendon, do you have the

Page: 35

21-cv-01531
11/12/2024 Trial
Plaintiffs Exhibit 389

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 document that I've asked the court reporter to mark
2 as McClendon Exhibit 2 in front of you?

3 MR. WALKER: I'm sorry. Which one is
4 it? Tell me.

5 A. Exhibit what?

6 MR. WALKER: No. Don't say anything.

7 Exhibit 2, just tell me what it is.

8 Q. Do you recognize the document in front
9 of you?

10 MS. WELBORN: What is the document,
11 Kathryn? Which one is it?

12 MS. SADASIVAN: I just dropped it into
13 the chat. It is the 2011 legislative
14 reapportionment committee guidelines.

15 MR. DAVIS: The chat is not going to
16 work because the system is pretty far away from us
17 all. Nobody can get to the chat easily.

18 MS. SADASIVAN: Okay. Would it help if
19 I pull it up so you can see it?

20 MR. WALKER: The May 2011 guidelines?

21 MS. SADASIVAN: This is the document
22 we're looking at.

23

24 (Plaintiff's Exhibit 2 was
25 marked for identification.)

Page: 36

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. I see that.

2 Q. Could you read it, please?

3 A. To myself or to you?

4 Q. Out loud. Thank you.

5 A. "Pursuant to the constitution of the
6 United States and the Constitution of the State of
7 Alabama, the Alabama state legislature is required
8 to review 2010 federal decennial census data
9 provided by the U.S. Bureau of the Census to
10 determine if it is necessary redistrict Alabama's
11 congressional, legislative, and state board of
12 education districts because of population changes
13 since the 2000 census.

14 Accordingly, the following guidelines
15 for congressional, legislative, and state board of
16 education redistricting have been established by the
17 legislature's permanent joint legislative committee
18 on reapportionment, (hereinafter referred to as the
19 'reapportionment committee.')

20 There you go.

21 Q. Thank you.

22 In the paragraph that you just read
23 where you said that the guidelines were established
24 by the committee, what does that mean?

25 A. Okay. Let me find it.

Page: 38

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. Do you recognize this document, Senator
2 McClendon?

3 A. Yes. It looks -- it looks familiar.

4 Q. How do you recognize this document?

5 A. The first part of what you said was cut
6 off. Say it again.

7 Q. How do you recognize this document?

8 A. How do I recognize it? I mainly
9 recognize it by the fact that it's reapportionment
10 committee guidelines. And I recall going through
11 that process and the adoption of those guidelines.

12 Q. Do you know who drafted the document?

13 A. Did I draft the document?

14 Q. Do you know who drafted the 2011
15 reapportionment --

16 A. Do I know who drafted it. I think I
17 have a good idea. But I can't say that I'm a
18 hundred percent certain who drafted the document.
19 So the answer to the question would be no.

20 Q. Who do you think drafted it?

21 A. I imagine it was our attorney at the
22 time. But I'm just not sure about that.

23 Q. Can you read please on Page 1 under May
24 2011 the paragraph beginning with "Pursuant"?
25

Page: 37

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. It's in the sentence beginning with
2 "Accordingly."

3 A. Yeah, I see it.

4 Well, that means the committee, the
5 reapportionment committee, adopted the guidelines,
6 had a vote and said that's our guidelines.

7 Q. Will you please go to page two and read
8 under numeral III Voting Rights Act, and read the
9 two paragraphs below it?

10 A. "Districts shall be drawn in accordance
11 with the laws of the United States and the State of
12 Alabama, including compliance with protections
13 against the unwarranted retrogression or dilution of
14 racial or ethnic minority voting strength. Nothing
15 in these guidelines shall be construed to require or
16 permit any districting policy or action that is
17 contrary to the U.S. Constitution or the Voting
18 Rights Act."

19 Number 2, "Redistricting plans are
20 subject to the preclearance process established in
21 Section 5 of the Voting Rights Act."

22 Q. I'm sorry. I'll just have you read Page
23 4, Paragraph 2 and 3 under Plans Produced by
24 Legislators. 2, 3, and 4. I apologize.

25 A. 2, 3, and 4 under Roman numeral V. Is

Page: 39

21-cv-01531
11/12/2024 Trial
Plaintiffs Exhibit 389

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 that what you're asking for? It must be. That's
2 the only 2, 3, and 4 on the page.

3 "A proposed redistricting plan will be
4 public information upon its introduction as a bill
5 in the legislative process, or upon presentation for
6 consideration by the reapportionment committee."

7 "Access to the legislative
8 reapportionment office computer system, census
9 population data, and redistricting work maps will be
10 available to all members of the legislature upon
11 request. Reapportionment office staff will provide
12 technical assistance to all legislators who wish to
13 develop proposals."

14 Number 4, "In accordance with Rule 23 of
15 the joint rules of the Alabama legislature (2011)
16 all amendments or revisions to the redistricting
17 plans, following introduction as a bill, shall be
18 drafted by the reapportionment office."

19 Q. I'm going to ask you to quickly scan the
20 lest of the guidelines and then let me know if you
21 followed those guidelines in 2011.

22 MR. WALKER: Objection to form. You may
23 answer the question.

24 A. Yes, ma'am, it's my belief that we
25 followed the guidelines.

Page: 40

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. And how did you go about following the
2 guidelines in the map-drawing process?

3 A. Well, you just read the guidelines and
4 try to stay -- and try to do what it says.

5 Q. What action did you take to make sure
6 that the guidelines were followed?

7 A. What action did I take to make sure they
8 were followed. I consulted with the attorney and
9 with the person drawing the map to make sure that
10 they were following the rules that we had before us.

11 Q. And how did you do that?

12 A. I just looked them in the eye.

13 Q. You looked them in the eye and what?

14 A. And said, "Are we staying within the
15 guidelines?" I'm not even sure I said that. We did
16 -- we did talk about the importance of the
17 guidelines. And it was understood everybody would
18 use that as exactly what they're called, guidelines.

19 Q. And so when you said you talked about
20 the guidelines and that they were important, were
21 you explaining the guidelines to the demographer?

22 A. I was not explaining them, no. We would
23 talk about them from time to time. But it was just
24 so well known that we followed the guidelines.
25 That's what we did. That's our job.

Page: 41

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. Do you know if anyone else talked to the
2 person -- the attorney or to the map drawer about
3 the guidelines?

4 A. Do I know? No, I do not.

5 Q. How many congressional redistricting
6 plans were considered by the reapportionment
7 committee in 2011?

8 A. I don't recall.

9 Q. How did the reapportionment committee
10 decide on which Alabama congressional map to
11 introduce?

12 A. We took the map that the members of the
13 congressional delegation had -- proved to be
14 satisfied with.

15 Q. That was the starting point in the 2001
16 map?

17 A. Yes.

18 Q. Was the goal in drafting to make sure
19 the congressional districts remained roughly the
20 same as in 2001?

21 A. One of the goals is that we keep the
22 core of the districts recognizable, or we attempt to
23 do that.

24 Q. Was it a primary goal to keep the same
25 racial demographics for each district?

Page: 42

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. To keep the what demographics?

2 Q. The racial demographics.

3 A. Racial demographics. In 2011, you know,
4 I don't know the answer to that.

5 Q. Was it a primary goal to keep District 7
6 the same black population as in 2001?

7 A. I do not know the answer to that
8 question.

9 Q. Did you consider race in drawing any of
10 the districts in 2011?

11 A. No.

12 Q. Why was there only one district with a
13 majority black voting age population in 2011?

14 THE REPORTER: I'm sorry. Could you say
15 that question over?

16 Q. Why was there only one district with a
17 majority black voting age population in 2011?

18 A. Well, I -- I don't need to speculate. I
19 will say I do not know why.

20 Q. What is Section 5 of the Voting Rights
21 Act?

22 A. Section 5 has to do with racial
23 injustice or racial problems when it comes to
24 elections. And it provides some solutions to that.
25 Or remedy, I should say.

Page: 43

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. What is a racial problem?

2 A. What is a racial problem? Are you

3 asking for an example or something? I don't quite

4 -- I don't understand your question, what is a

5 racial problem.

6 Q. I'm asking you what you meant by your

7 statement. Do you want your court reporter to read

8 your answer about what Section 5 is back?

9 A. To make sure that every -- every group,

10 subgroup, race had a fair opportunity to express

11 themselves at the polls.

12 Q. And why did Section 5 apply to Alabama?

13 THE REPORTER: I'm sorry. What?

14 Q. Why did Section 5 apply to Alabama?

15 A. You know, I could -- I could guess at

16 that. But I don't want to do that. So I'll say I

17 don't know.

18 Q. You don't know why Section 5 applied to

19 Alabama?

20 A. Like I said, I could guess at it. But I

21 don't want to do that. So I don't know.

22 Q. And I'm just asking you don't know why

23 Section 5 applied to Alabama?

24 A. Correct.

25 Q. The guidelines mention preclearance

Page: 44

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 bill in the house. I don't remember who did the BOE

2 bill, who started it. I don't remember who started

3 the congressional bill.

4 Q. Did you consider a plan permitting two

5 majority minority districts in 2011?

6 A. Not to my knowledge.

7 Q. Why?

8 A. It wasn't brought before us.

9 Q. It wasn't brought before who?

10 A. That is correct.

11 Q. Who? You said, "It wasn't brought

12 before us." It wasn't brought before who?

13 A. The redistricting committee.

14 Q. Did you have the opportunity to consider

15 a map with two majority minority districts in the

16 legislature?

17 A. No, I don't think so.

18 Q. You did not?

19 A. I don't remember that at all, if we did.

20 Q. I'm going to -- I'm dropping it in the

21 chat, as well, in case it's helpful. I know it's

22 probably not.

23 I am going to show you what I ask the

24 court reporter to mark as McClendon Exhibit 3. And

25 let me just share my screen quickly. It is exhibit,

Page: 46

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 under Section 5 of the VRA. What involvement did

2 you have in obtaining justice department

3 preclearance of a proposed congressional plan in

4 2011?

5 A. None.

6 Q. Did you have any role in proposing

7 judicial preclearance of the 2021 map?

8 A. Did I have any -- I'm really having a

9 time understanding you. Did I have any -- okay.

10 Say that -- say that again, please, ma'am.

11 Q. Did you have any role in proposing

12 judicial preclearance in the redistricting process

13 in 2011?

14 A. No.

15 Q. Did you introduce any proposed

16 redistricting plans for the Alabama congressional

17 delegation in 2011?

18 A. I do not recall if the bill started in

19 the house or in the senate. I don't know. So I

20 can't answer the question.

21 Q. Did you introduce any redistricting

22 bills in the 2011 legislative session?

23 A. Any redistricting bill. So we've gone

24 outside of congressional.

25 Yes, I'm sure I introduced the house

Page: 45

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 and then the number after it is SOS 001929. And

2 this is what the document looks like.

3 MR. WALKER: Can you describe it,

4 please?

5 THE WITNESS: Look up here.

6 MR. WALKER: Oh, that. Okay. We've got

7 it.

8

9 (Plaintiff's Exhibit 3 was

10 marked for identification.)

11

12 Q. Do you recognize this document, Senator

13 McClendon?

14 A. No.

15 Q. I will represent to you that this is a

16 news article produced by the secretary of state, a

17 defendant in this case. In it, Brian Lyman is

18 discussing a plan put forward by Mr. Buskey which

19 would have created two majority minority districts.

20 And in this article, you were quoted as

21 saying -- on Page 2, the second paragraph on Page 2,

22 as saying, The Buskey plan would lead to

23 "retrogression," or a retreat from minority

24 population benchmarks set by the department of

25 justice. Under the Voting Rights Act, the DOJ must

Page: 47

21-cv-01531
11/12/2024 Trial
Plaintiffs Exhibit 389

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 approve the state's redistricting plan before it can
2 be implemented. If the redistricting plan retreats
3 from the justice department benchmarks, such as
4 reducing minority population in a
5 previously-approved congressional district, the
6 state must show that it had no discriminatory
7 purpose in the move and did not reduce minority
8 voters' effective exercise of the electoral
9 franchise.

10 Does that sound familiar to you?

11 MR. WALKER: Are you asking him if he
12 said that, or what?

13 Q. I'm just asking if that helps refresh
14 your memory.

15 A. Well, it provides a memory. I don't --
16 I don't remember this.

17 Q. So you don't know why you believed that
18 the map introduced by Representative Buskey would
19 have led to retrogression?

20 A. So what did he introduce? No. I'm
21 really lost on trying to decipher this.

22 Q. So is that -- did you say the quote that
23 I just read to you?

24 A. I don't recall saying it. I don't
25 recall the article.

Page: 48

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 quoted. And I'm asking if you have any reason to
2 believe that that quote is inaccurate.

3 A. Well, there are no -- the only quotation
4 marks are around the word "retrogression" and around
5 the words "effective exercise of the electoral
6 franchise." There's no -- I don't see where I was
7 attributed a quote in those paragraphs.

8 Q. Do you have any reason to believe that
9 that paragraph discussing -- beginning with "Rep Jim
10 McClendon" and continuing on until "This plan, as
11 far as the justice department and Voting Rights Act
12 goes, it's a failure," do you have any reason to
13 believe that that is inaccurate?

14 A. Well, the only part that has quotes is
15 the one you just read. And I do not recall making
16 that statement.

17 Q. So you don't think that that was an
18 accurate reflection of what you thought at the time?

19 MR. WALKER: Objection to form. You may
20 answer it.

21 A. I just -- I don't recall making the
22 statement.

23 Q. And you don't recall having the
24 opportunity to see two majority minority districts
25 in a congressional plan?

Page: 50

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. How about I give you a few minutes to
2 look through the article, and then I'll ask you some
3 questions again.

4 MR. WALKER: Kathryn, we've been going
5 for about an hour, and I need to step out for a
6 second. Would you mind if we took a five-minute
7 break?

8 MS. SADASIVAN: If you don't mind, we'll
9 just finish this question after Senator McClendon
10 has a chance to look at it. And then after that, we
11 can take a break.

12 MR. WALKER: Certainly. No problem.

13 MS. SADASIVAN: Thank you so much,
14 Dorman.

15 A. I'm ready when you are.

16 Q. Do you have any reason to believe that
17 quote is inaccurate?

18 A. Now, what did you --

19 MR. WALKER: Which quote?

20 A. Yeah. My question is what quote are you
21 talking about?

22 Q. On Page 2 of the exhibit I just shared
23 with you beginning with Rep Jim McClendon,
24 R-Springville, who carried the plan in the house.
25 There are two paragraphs where Senator McClendon is

Page: 49

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. I do not.

2 MR. DAVIS: Are we breaking now?

3 MS. SADASIVAN: No. I'm sorry. I asked
4 a question.

5 MR. DAVIS: And he answered it.

6 Q. You don't recall seeing two majority
7 minority districts in the Alabama congressional plan
8 in 2011?

9 A. I do not recall it.

10 Q. Okay. Thank you so much.

11 MR. SADASIVAN: We can take a break now.

12 MR. WALKER: Thank you.

13 THE VIDEOGRAPHER: We are off the
14 record. The time is 3:09 p.m.

15 (Recess was taken.)

16 THE VIDEOGRAPHER: We are back on the
17 record. The time is 3:22 p.m.

18 Q. Senator McClendon, I just want to
19 clarify really quickly Exhibit 3. You stated that
20 you don't remember being interviewed for that
21 article, right?

22 A. I do not.

23 Q. And you don't remember saying anything
24 about retrogression?

25 A. Yes. The answer is the same as it was

Page: 51

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 before. I do not remember.

2 Q. If there was a plan in 2011 that

3 complied with all the districting principles and the

4 guidelines and created two majority minority

5 districts, would you have voted for it?

6 A. Okay. Say that again. We're having a

7 hard time.

8 THE REPORTER: I think if you would slow

9 down just a little bit, that would help.

10 MS. SADASIVAN: If I come in a little

11 bit, is this better?

12 MR. WALKER: No. Slow down.

13 Q. If there was a plan that complied with

14 the redistricting guidelines and created two

15 majority minority districts in 2011, would you have

16 voted for it?

17 A. Thank you. I -- I understood you very

18 well.

19 I would certainly have considered it and

20 would -- but part of that is looking at what else is

21 available. So I would have put it on the list for

22 consideration, yes.

23 Q. Let's move to the 2021 redistricting

24 process.

25 A. Good.

Page: 52

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 about the timeline?

2 A. Correct.

3 Q. Anything else?

4 A. That's the main -- at that point, that

5 was the main thing, when can we get started.

6 Q. At what point?

7 A. Was that a question?

8 Q. Yes. You said "at that point." And I'm

9 just asking at what point was that the main --

10 A. That was prior to receiving the data

11 from the census bureau.

12 Q. And did your responsibilities to confer

13 with the attorney and the map drawer change after

14 you received census data?

15 A. I'm not sure I understand your question.

16 Do it again and let me listen carefully.

17 Q. You just shared that your

18 responsibilities before the census numbers came out

19 with respect to the attorney and the map drawer as

20 senate chair of the reapportionment committee was to

21 determine a timeline.

22 And I'm asking if your responsibilities

23 as senate chair of the reapportionment committee

24 with respect to conferring with the attorney and map

25 drawer changed once you received census data.

Page: 54

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. What was your role in the

2 reapportionment committee in 2021?

3 A. Senate chair.

4 Q. And what were your responsibilities as

5 senate chair?

6 A. Pretty much the same as it was as house

7 chair, to confer with the attorney and the map

8 drawer, to help try to set the schedule of events as

9 they were going to unfold.

10 Q. And when you say "confer with the

11 attorney and map drawer, I'm not asking for

12 attorney-client information. But generally as

13 senate chair, what responsibilities did conferring

14 with the attorney and map drawer entail?

15 A. Well, for quite some time, we were

16 trying to decide when we could actually get started

17 on the process. And we spent a little bit of time

18 wondering when we were going to get the data. We

19 spent a lot of time wondering when we were going to

20 get the data. And we shared some speculation about

21 when it would show up. So we did the timing of the

22 -- and sequence of events is one of the things

23 initially that we talked about.

24 Q. And so conferring with the attorney and

25 the map drawer, you were trying to reach decisions

Page: 53

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. Well, no. It was just part of a

2 continuum of setting the schedule and seeing when

3 things would work out, how things -- in what order

4 things needed to unfold in order to get the job done

5 in a timely manner.

6 Q. And other than you and the map drawer

7 and the attorney, who else was involved in that

8 decision-making?

9 A. Representative Pringle.

10 Q. Anybody else?

11 A. No.

12 Q. So you, the attorney, Representative

13 Pringle, and the map drawer determined when you

14 would begin the public hearings or the

15 reapportionment committee meetings?

16 A. Well, the staff, the reapportionment

17 staff, had some input into it. Although the public

18 hearings, we gave -- we gave a time frame to the

19 community -- the community college system. The

20 chancellor loaned us one of his personnel to help us

21 coordinate those public hearings. And so he's the

22 one that actually set up the dates, locations, and

23 times for the public hearings.

24 I think we told him we wanted to get

25 this done the first couple of weeks in September.

Page: 55

21-cv-01531
11/12/2024 Trial
Plaintiffs Exhibit 389

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 And then one of the representatives asked for
2 additional meetings, so it spilled over into the
3 third week into September.

4 Q. So just going back to your role as
5 senate chair of the reapportionment committee and
6 your responsibilities to confer with the attorney
7 and the map drawer, what were -- the public hearings
8 -- strike that.

9 Going back to your role as senate chair
10 of the reapportionment committee and your
11 responsibilities to confer with the attorney and map
12 drawer, what other timelines did you discuss?

13 A. We also needed to be able to give some
14 idea as to when we would actually be prepared for a
15 legislative session, for the governor to call a
16 special session to consider redistricting.

17 Q. And how did you arrive at that
18 information of when that should be?

19 A. There was -- we just sort of projected
20 forward saying we need -- we'll need X amount of
21 time for the public hearings and then we'll need X
22 amount of time to meet with the legislators and the
23 congressional delegation and the board of education.

24 And then we basically set a timeline and
25 said we can -- and then at this point we'll be ready

Page: 56

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Senator McClendon, and any other person about
2 redistricting in 2021.

3 A. Okay. I don't know the answer to that
4 question.

5 Q. What role did you play in setting the
6 schedule of the public hearings on redistricting?

7 A. I talked to the chancellor of the
8 two-year system and asked him to designate someone
9 to work with our staff. And then they worked it out
10 from there and came back with a schedule and a plan.

11 Q. Did you review the locations of the
12 public hearings?

13 A. Yes, I looked at what they put together.
14 And we were just about ready to announce it when
15 Representative Hall requested that we add some more,
16 which we did.

17 Q. When were you preparing to announce the
18 dates and locations of the public hearings?

19 A. You know, I don't know why I would
20 remember this, but I think June 30th was our target
21 date to do that. And then I believe it was the day
22 before we got a letter, an email maybe -- I didn't
23 get it. The staff received communications from one
24 of the members of our redistricting committee
25 requesting that there be another half dozen added on

Page: 58

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 to ask the governor to call a special session.

2 Q. And were other members of the
3 reapportionment committee besides House Chair
4 Pringle involved in that decision?

5 A. No.

6 Q. When did you start planning for the 2021
7 redistricting process?

8 A. We probably started thinking about it a
9 year and a half ahead of time or more, two years
10 maybe ahead of time.

11 Q. And what were the first steps that you
12 took to prepare for the redistricting process?

13 A. The first thing that I personally tried
14 to figure out was what the timeline was going to be.
15 And, of course, that proved to be futile because of
16 the delay in receiving the data and another delay
17 and another delay.

18 Q. When was your first meeting on
19 redistricting in 2021?

20 A. You know, I don't know the date.

21 Q. Do you know who it was with?

22 A. Are you talking about the redistricting
23 committee? Or who are -- what kind of meeting are
24 you talking about?

25 Q. I'm talking about a meeting between you,

Page: 57

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 to it.

2 So we sort of had to work on that before
3 we actually announced it. And I don't know the
4 final date that we came out with it.

5 Q. And that's Representative Laura Hall?

6 A. Yes.

7 Q. And there was no deadline to decide on
8 public hearings?

9 A. Well, there was a deadline. June 30th.

10 Q. Who set the deadline?

11 A. But on June -- I think it was June 29th,
12 we received communication from her. So we sort of
13 scrapped the deadline in order to the comply with
14 her request.

15 Q. Is there a time to determine public
16 hearings set by law in Alabama?

17 A. Ask that again, now.

18 Q. Is there any law governing public
19 redistricting hearings in Alabama?

20 A. Not to my knowledge.

21 Q. Was there any committee deadline or a
22 committee -- rather a committee rule setting a
23 deadline to determine public hearings?

24 A. Not to my knowledge.

25 Q. Who developed the deadline on

Page: 59

21-cv-01531
11/12/2024 Trial
Plaintiffs Exhibit 389

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 determining the time, location, and manner of public
2 hearings?

3 A. I think the staff, in conjunction with a
4 representative from the community system, said we
5 feel like we can get it done by this date, and
6 actually communicated with members of the
7 redistricting committee for suggestions and asked
8 that they have those suggestions in by June 30.

9 Q. When did you discuss public hearings
10 with the reapportionment committee?

11 A. When did who?

12 Q. When did you discuss -- you or other
13 members of the legislative delegation of the
14 reapportionment committee discuss the public
15 hearings?

16 A. I don't know the answer.

17 Q. What venues did you consider in
18 Montgomery for public hearings?

19 A. Well, we held one at the -- the public
20 one was at the state house.

21 Q. Were there any others?

22 A. I don't know the answer to that. I
23 don't have that schedule in front of me. I would be
24 surprised if we had more than one, but I don't know
25 for sure.

Page: 60

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 and just see if you had any other public hearings in
2 Montgomery?

3 A. Well, I don't see any.

4 Q. Did you consider any historically black
5 colleges or universities when you were scheduling
6 the public hearings?

7 A. Well, I wasn't doing the considering.
8 It was the staff in the two-year college.

9 The original idea started with having
10 these meetings at our two-year colleges because they
11 are spread all over the state. And so that's why we
12 got a liaison from them to help schedule these
13 things.

14 So whether they -- I think I saw one
15 with Troy on here. And if I recall -- yeah, here is
16 one at Trojan Center Ballroom. And that's because
17 there was not a community college close by or
18 something like that.

19 So by and large, we focused on our
20 community college system to host us, to host these
21 meetings. So --

22 Q. How many meetings did --

23 A. I'm sorry. Go ahead. Your turn.

24 Q. I was just asking how many meetings did
25 the reapportionment committee hold in 2021?

Page: 62

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 MS. SADASIVAN: I am going to drop into
2 the chat -- again, I know you all can't see it. So
3 I will share my screen.

4 But I would ask the court reporter to
5 mark it as McClendon Exhibit 4. It is a document
6 that says 2021 Legislative Reapportionment Public
7 Hearings Final.

8 Do you have that before you, Senator
9 McClendon?

10 MR. WALKER: Give me just a second.

11

12 (Plaintiff's Exhibit 4 was
13 marked for identification.)

14

15 MR. WALKER: Is this it? Is that what
16 she's showing?

17 THE WITNESS: That looks like it. It's
18 hard to tell. It does look similar to it.

19 MS. WELBORN: That's it.

20 A. Does yours start off with Drake State in
21 the upper left?

22 Q. Yes, sir.

23 A. Okay. Then we probably have -- I
24 probably have that document before me, yes.

25 Q. And can you look through that document

Page: 61

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. 22.

2 MR. WALKER: No. Meetings.

3 A. Oh, meetings. I can think of two
4 meetings that we had. I don't know if there was a
5 third or not.

6 Q. What were the dates of those meetings?

7 A. I'm thinking the first one was during
8 the legislative session, probably the very -- toward
9 the very end of the regular session, which would
10 have put it in May. We did it because we had -- you
11 know, everybody was in town.

12 And then the next meeting that I am
13 thinking about was held just prior to the special
14 session that was called for consideration of the
15 bills, the redistricting bills.

16 MS. SADASIVAN: So I am going to drop in
17 the chat an exhibit that I'll ask the court reporter
18 to mark as McClendon Exhibit 4. I'm going to pull
19 it up on my screen and share my screen with you so
20 you can see it.

21 MR. WALKER: I think this is five.

22 MS. SADASIVAN: I'm sorry. Five. Thank
23 you.

24 Q. Can you see my screen?

25 A. Reapportionment Committee Redistricting

Page: 63

21-cv-01531
11/12/2024 Trial
Plaintiffs Exhibit 389

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Guidelines, May 5th. Okay.

2

3 (Plaintiff's Exhibit 5 was

4 marked for identification.)

5

6 Q. Have you seen this document before,

7 Senator McClendon?

8 A. Give me a second to look at it. Yes.

9 It looks -- it looks familiar.

10 Q. Where have you seen this document

11 before?

12 A. Where? At the state house.

13 Q. How do you recognize it?

14 A. I'm just looking at -- well, I look at

15 the title, I look at the date, I look at the plus or

16 minus 5 percent, and some of the other topics. And

17 those all appear to be the guidelines that we --

18 that the redistricting or reapportionment committee

19 adopted prior to the map-making process.

20 Q. And did you endeavor to comply with

21 these policies in the 2021 redistricting --

22 A. Did I --

23 Q. -- process?

24 A. Did I try to comply with these policies?

25 Is that your question?

Page: 64

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 guidelines, then I was dependent on the attorney,

2 Dorman Walker, and the map drawer during the

3 process, once they started actually putting lines

4 down on paper, to stay inside those guidelines.

5 Q. So your role was overseeing the

6 map-drawing process to ensure that it complied with

7 the guidelines?

8 A. One of my goals was to be in compliance

9 with the Voting Rights Act of 1965. That was one of

10 my jobs. And, of course --

11 Q. It was your job to ensure compliance

12 with the Voting Rights Act of 1965?

13 A. Yes.

14 Q. And how did you go about doing that?

15 A. Well, I counted on these experts that

16 were working for me and working for the committee to

17 follow those guidelines and be familiar with the

18 court cases and with the law and with the rulings.

19 Q. And what is required to determine if a

20 map complies with Section 2 of the Voting Rights

21 Act?

22 A. Say that again. Once again -- something

23 about the audio. It could be me. But go ahead and

24 try it again.

25 Q. It's probably me. I'm also a

Page: 66

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. Did you comply with these -- yes. Did

2 you comply with these policies in the 2021

3 redistricting process as senate chair of the

4 reapportionment committee?

5 A. I did.

6 Q. Section II f states, "Districts shall be

7 drawn in compliance with the Voting Rights Act of

8 1965, as amended. A redistricting plan shall have

9 neither the purpose nor the effect of diluting

10 minority voting strength, and shall comply with

11 Section 2 of the Voting Rights Act and the United

12 States Constitution."

13 How did you go about complying with

14 Section 2 of the Voting Rights Act?

15 MR. WALKER: Are you -- may I ask,

16 Kathryn, are you talking about for the congressional

17 plan?

18 MS. SADASIVAN: I'm asking -- he said

19 Senator McClendon tried to comply with these

20 guidelines as senate chair of the redistricting

21 committee. I'm asking how in general did Senator

22 McClendon, as senate chair of the reapportionment

23 committee, go about ensuring compliance with this

24 particular policy.

25 A. Well, subsequent to us adopting these

Page: 65

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 southerner, so I talk quickly, and I'm probably

2 using too many adjectives.

3 I was asking you what is required to

4 determine whether a map complies with the Voting

5 Rights Act.

6 A. Well, it's -- I would say it's a legal

7 opinion first to be familiar with the Voting Rights

8 Act and subsequent cases, and then to be able to

9 compare what we have produced, what's in front of

10 us, with the knowledge of the requirement of the

11 Constitution and the Voting Rights Act.

12 Q. And when did you compare what was

13 produced by your demographer with the requirements

14 of the Voting Rights Act?

15 A. I think probably every time we talked,

16 this was part of it. It came up in the conversation

17 as we went through the map-drawing process. And

18 both the attorney and the map drawer would be quick

19 to say that could -- that particular line moved over

20 there could be a problem, and we need to look at it.

21 Q. And when you say "could be a problem,"

22 you mean could be a problem under the Voting Rights

23 Act?

24 A. Yes.

25 Q. And what was your understanding of what

Page: 67

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 was required to comply with the Voting Rights Act?

2 A. Well, as far as what's in the Voting

3 Rights Act, I couldn't quote it. But that's why I

4 have an attorney.

5 Q. How many times did you have a

6 conversation where the map drawer said if you move

7 this line, you could have a problem under the Voting

8 Rights Act?

9 A. I can say I heard that several times.

10 Q. And who did you hear that from?

11 A. I heard it both from the attorney and

12 the map drawer, not necessarily at the same time.

13 Q. You were --

14 A. Pardon?

15 Q. You were advised several times by your

16 attorney and by the map drawer that the way that a

17 particular line was drawn could violate the Voting

18 Rights Act?

19 A. Or the way a line was proposed to go.

20 That was their job.

21 Q. And did that occur with respect to the

22 congressional map?

23 A. Not to my knowledge. Because I was not

24 involved in drawing the congressional map.

25 Q. Who was involved in drawing the

Page: 68

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. Well, I think at different times there

2 were different issues.

3 Q. Such as?

4 A. On the congressional side, I cannot --

5 as far as the congressional districts go, I can't

6 give you a single example because I simply wasn't

7 involved in that process.

8 Q. When did you adopt the guidelines that

9 we're talking about right now?

10 A. Maybe May the 5th of 2021. That's the

11 date on the document. And that was one of the

12 purposes of -- objectives of that particular meeting

13 of the committee, was to have the guidelines in

14 place before we got the data and before we started

15 working with the elected officials.

16 Q. So the third policy in Section II j

17 (iii) in McClendon Exhibit 5 that we're talking

18 about now, the May 5, 2021, redistricting criteria,

19 says, "Districts shall respect communities of

20 interest, neighborhoods, and political subdivisions

21 to the extent practicable and in compliance with

22 paragraphs a through l."

23 What is your understanding of what that

24 policy requires?

25 A. Well, when possible, it's good to keep

Page: 70

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 congressional map?

2 A. The map drawer met with the

3 congressional delegation or their representative

4 sometimes in person, sometimes virtually like this,

5 and really worked this out with the members of the

6 congressional delegation.

7 Q. Were the members of the congressional

8 delegation responsible for ensuring that map

9 complied with the Voting Rights Act?

10 A. That's a good question. I don't know

11 the answer to that question.

12 Q. Were you responsible for ensuring that

13 the congressional map complied with the Voting

14 Rights Act?

15 A. Yes. I would say that was one of my

16 responsibilities.

17 Q. In the conversations that you had

18 regarding potential violations of the Voting Rights

19 Act, did you or anyone else discuss racial

20 polarization analysis?

21 A. No. No.

22 Q. Do you know what the basis for -- in

23 these conversations when you heard there might be a

24 potential Voting Rights Act violation, do you know

25 what that was based upon?

Page: 69

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 communities of interest, communities that have a

2 particularly common political interest, keep them

3 together, keep them in the same whatever it is,

4 house direct, congressional district, BOE district,

5 if possible.

6 Q. You said "common political interests."

7 Is that your definition of community of interest?

8 A. There's a -- there's a definition right

9 here in whatever this is on Line 30. Line 30

10 through 32 is a definition of communities of

11 interest.

12 Q. So you just mentioned a common political

13 interest, and I was wondering if that was part of

14 your definition of communities of interest.

15 A. Oh, that's just one -- that's just one

16 part of it, one part -- one way you could have a

17 community of interest. There's a lot of different

18 ways you can have a community of interest.

19 Q. What do you consider to be communities

20 of interest in Alabama?

21 A. There are -- there's not a community of

22 interest in Alabama. There are many communities of

23 interest.

24 Q. Such as?

25 A. Well, a city. A city is a community of

Page: 71

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 interest.

2 Q. Is Montgomery a community of interest?

3 A. Yes. Montgomery is a city.

4 Q. What are some other communities of

5 interest?

6 A. You can have parts of a city that are a

7 community of interest. There are -- a county is a

8 community of interest.

9 Q. What is the black belt in Alabama?

10 A. It's a geographic area pretty much

11 across the middle of the state from east to west.

12 And it has to do with the rich soil that's found in

13 that area.

14 Q. Do you know what counties are in the

15 black belt?

16 A. I couldn't name -- I could name a few

17 counties. But I cannot -- I cannot name the

18 counties in the black belt.

19 Q. Is there anything other than the soil

20 that might define the black belt?

21 A. I don't know what you're fishing for.

22 Q. I can ask the question again.

23 What are other characteristics that you

24 know of of the black belt?

25 A. That's a better question.

Page: 72

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. And how do you see that racial data when

2 you decide to look at it?

3 A. The software will produce that.

4 Q. What software?

5 A. The software used to draw the maps.

6 Q. Do you know what that software is?

7 A. Give me a multiple choice, and I'll give

8 it to you. Not right off the bat, no. You know,

9 it's like I know it when I see it. But, you know, I

10 never used it. But it's a new system for us. We

11 recently adopted it.

12 Q. When was the second meeting of the

13 reapportionment committee in 2021?

14 A. If, in fact, there were just the two

15 meetings, it would have been immediately -- let me

16 see. It would have been on the Tuesday prior to the

17 special session convening on a Thursday. So

18 whatever those dates are.

19 Q. Do you have reason to believe that there

20 was another meeting of the reapportionment committee

21 other than the two we're discussing now?

22 A. No, I don't. But I wouldn't be

23 surprised. But I just don't believe there was.

24 Q. I unfortunately don't have the exhibits

25 (inaudible) the meetings, so we'll just move on.

Page: 74

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Well, I think there's a perception that

2 there's a lower socioeconomic income level across

3 the black belt. There's probably -- there may be --

4 that would probably be the main thing.

5 Q. Do you consider the black belt a

6 community of interest?

7 A. No, not necessarily, because it's

8 multiple counties, multiple communities.

9 Q. Going back to your testimony earlier

10 about maintaining the core of districts. Does

11 maintaining the core of the existing congressional

12 districts require consideration of racial data?

13 A. Say that again and slow down again. I'm

14 not listening very fast today.

15 Q. I'm sorry. I'm speaking quickly. And I

16 like that term, "listening fast."

17 So what I asked was you testified

18 earlier that you were maintaining -- or attempting

19 to maintain the core of exhibiting districts in the

20 congressional map. And I'm asking whether that

21 requires the consideration of racial data.

22 A. Well, we don't -- no. We don't -- we

23 don't use racial data except after the fact.

24 Q. After what fact do you use racial data?

25 A. After the lines are drawn.

Page: 73

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 So you said you met the Tuesday before

2 the Alabama special legislative session began on

3 redistricting?

4 A. Correct.

5 Q. And that was the second meeting in your

6 memory of the reapportionment committee?

7 A. That is -- I believe that is correct,

8 yes.

9 Q. Were there other meetings of the

10 reapportionment committee outside of those two to

11 draw the map that we're discussing today?

12 A. No, not of the -- not of the committee.

13 Not a regular committee meeting, no.

14 Q. What about a subset of the committee?

15 A. What about what?

16 MS. WELBORN: A subset.

17 Q. Were there other meetings of a subset of

18 the committee?

19 A. No.

20 Q. What was the agenda for your October

21 26th meeting, reapportionment committee meeting?

22 A. To select -- so is that the date,

23 October 26th? That was meeting number two?

24 A goal for that committee was to select

25 the bills, the maps, that would be introduced to the

Page: 75

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021Jim McClendon
12/17/2021

1 legislature on Thursday.

2 Q. And how many congressional maps did the

3 members of the reapportionment committee vote on?

4 A. I think just the one. But I can't -- I

5 can't swear to that.

6 Q. So when you say "select the map," you

7 mean to vote on the one map?

8 A. I can't remember if a substitute

9 congressional map was offered or not.

10 Q. I am going to drop into chat, and I will

11 share my screen, as well. I will represent to you

12 that this is a certified transcript of the October

13 26, 2021, meeting of the reapportionment committee.

14

15 (Plaintiff's Exhibit 6 was

16 marked for identification.)

17

18 Q. Do you see this?

19 A. I do.

20 MS. SADASIVAN: I'm going to ask

21 Mr. Walker if you would be so kind to mark this as

22 Exhibit 6.

23 MR. WALKER: I have done so. It is

24 marked.

25 MS. SADASIVAN: Thank you, sir.

Page: 76

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 that that's an issue? Is that what you're asking,

2 that racial discrimination is an issue?

3 I guess, you know, the first thing I

4 would say is if we had an incumbent minority person

5 and there was such a change in the composition of

6 the voters in that district, that that -- that

7 district may no longer have -- have less of a chance

8 of having a minority representative. That would be

9 -- I think that would be a red flag.

10 Q. So a suspicious racial issue would be if

11 a minority representative were no longer able to win

12 an election in their district?

13 A. Or threatened if they -- yeah. Roughly

14 what you said. I don't exactly agree word for word.

15 But yeah, that's the idea.

16 Q. What is your understanding of why RPV --

17 and when I say RPV, I mean racially polarized

18 voting. What is your understanding of why RPV was

19 discussed in the October 26th meeting?

20 A. Wait a minute. I missed one word I

21 didn't understand. Why is it what in the meeting?

22 MS. WELBORN: Discussed.

23 A. "Discussed," is that the word you used?

24 Q. Yes, sir.

25 A. Oh, okay. Well, it was brought up by

Page: 78

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021Jim McClendon
12/17/2021

1 Q. I'll let you quickly scan -- it's quite

2 a long document. I'll let you just scan through it.

3 And if you wouldn't mind just letting me know if

4 this looks familiar to you.

5 A. Well, I've glanced through it. It looks

6 familiar. But it's really --

7 Q. Okay. Again, I'll represent to you that

8 it's a transcript of the October 26, 2021, meeting

9 of the reapportionment committee, as you likely

10 remember. And as you can see from the transcript, a

11 considerable portion of the meeting was about racial

12 polarization analysis.

13 What is your understanding of racial

14 polarization in voting?

15 A. In this case, this -- this is an

16 additional evaluation or test of the data to any

17 place it's suspicious that there could be racial

18 discrimination. It's an extra test tacked on to

19 what we normally do to see if, in fact, we are in or

20 out of compliance with the Voting Rights Act and our

21 own guidelines and the court cases.

22 Q. And what would give rise to suspicious

23 racial discrimination that would require a racial

24 polarization analysis?

25 A. What would -- what would make you think

Page: 77

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 one of the committee members.

2 Q. Who?

3 A. It might have been Representative

4 England. I think that's who it was. I'm not a

5 hundred percent sure. I think he had a good bit to

6 say about it.

7 Q. And why did -- what was your

8 understanding of why Representative England was

9 concerned about racially polarized voting?

10 A. I didn't have an understanding of why he

11 was concerned. He just let it be known that he was

12 concerned.

13 Q. Did anyone else express concerns about

14 racially polarized voting?

15 A. I don't remember.

16 Q. What was the conversation?

17 A. I don't know. If we've got the

18 transcript, we can take a look at it.

19 I think there was someone that may have

20 even suggested we should have evaluated all 140

21 races for this. I don't remember who that was.

22 Q. So if you wouldn't mind turning to Page

23 17 of McClendon Exhibit 5.

24 MS. WELBORN: I think it's Exhibit 6.

25 Q. Exhibit 6. I apologize.

Page: 79

21-cv-01531
11/12/2024 Trial
Plaintiffs Exhibit 389

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. I'm on Page 17. Yep, Smitherman.

2 Q. All right. So you'll see that

3 Representative Laura Hall asked you about a racially

4 polarized voting study done.

5 Can you read where it says Senator

6 McClendon beginning with "Because"?

7 A. "Because of the black age voting

8 population in Congressional District 7, there was

9 not one needed because it was over 54 percent black

10 voting age population."

11 Q. And then will you also read what

12 Representative Hall said in response?

13 A. "So you're saying that we don't have a

14 black -- we don't have a polarization, racially

15 polarization study?"

16 Q. And then please read your response.

17 A. "None. Because the voting age" -- well,

18 I suspect that's a transcript error. "What is it?

19 I got it right here."

20 "Because the voting age is 54." Don't

21 you think that's the VAP, 54, instead of the voting

22 age?

23 Q. And then -- I'm sorry. Can you please

24 just read it as it is on the transcript, what

25 Representative Hall said after that beginning with

Page: 80

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 "And"?

2 A. "And you use District 7 as the basis for

3 not having such a study done?"

4 Q. And then please read your response.

5 A. The black vote -- "The black VAP of the

6 district is sufficient to where you don't need a

7 study done."

8 Q. Who makes the decision to undertake an

9 RPV analysis?

10 A. The attorney.

11 Q. If you asked the attorney to undertake

12 an RPV analysis, what would happen?

13 A. We would discuss whether, in his

14 opinion, the issue was actually there or not and

15 needed to be decided and further information

16 gathered on the outside. I mean, his job is not

17 just to jump.

18 Q. If you asked Mr. Walker to conduct an

19 RPV analysis, would one be conducted?

20 A. First, I don't think -- I would not ask

21 Mr. Walker to do something. I would ask Mr. Walker,

22 "What is your opinion? Do we need to do this or

23 not?" That's how it works.

24 Q. I understand. And if you asked him to

25 undertake a racial polarization analysis, would one

Page: 81

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 be undertaken?

2 A. You know, that's a hypothetical. And

3 I'm not going to do a hypothetical.

4 Q. Do you have the power, as senate chair

5 of the reapportionment committee, to ensure that the

6 individuals, the attorney, and the map drawer, for

7 example, comply with the Voting Rights Act?

8 A. Well, yes. That's their responsibility.

9 Q. And if you decided that you needed a

10 racially polarized voting study done, could you

11 insist that they undertake one?

12 A. Well, once again, you're doing something

13 hypothetical. I depend on Mr. Walker for his legal

14 opinion and his experience. He's got many more

15 years of experience than I do.

16 And what I most likely do with him is

17 say, "Dorman, what do you think about this? Do we

18 need to do this or not? Does it make any sense?"

19 Q. Senator McClendon, I understand that

20 you're very personable and you rely on the opinions

21 of your attorneys.

22 What I'm asking you is if you have the

23 power to insist, as senate chair of the

24 reapportionment committee, that a racially polarized

25 voting study be undertaken?

Page: 82

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. You know, I don't know the answer to

2 that question.

3 Q. You don't know whether or not you could

4 undertake --

5 A. I don't know. The only way I would know

6 is if I had exercised that and see how it worked

7 out. But I've never exercised it, never thought

8 about exercising it. So I don't know the answer to

9 that.

10 Q. You didn't think about asking for an RPV

11 analysis when Representative England and

12 Representative Hall asked for one to be undertaken?

13 A. It's like -- it's highly probable that

14 we discussed doing that afterwards, after the

15 meeting. I may have discussed it with Mr. Walker.

16 And if he had thought it was of value and worthwhile

17 to do and would give us additional information that

18 we needed, it would have been ordered. And if he

19 had felt like it was an exercise in futility and a

20 waste of time and money, he would have made that

21 expression, as well.

22 Q. And did you ask Mr. Walker to undertake

23 an RPV analysis after the October 26th meeting?

24 A. We may have talked about it. But I

25 don't remember exactly doing that.

Page: 83

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. How much did Alabama's population change
2 between 2011 and 2021?

3 A. I believe it increased about 5 percent.
4 I think it went from 4.88 to a little over 5
5 million, 5,020,000 or something like that.

6 Q. In this redistricting cycle, was
7 District 7 over or underpopulated?

8 A. I think it was under. Yes, I'm sure it
9 was under.

10 Q. I'm going to go back to McClendon
11 Exhibit 6. If you wouldn't mind please turning to
12 Page 19.

13 And if you could look at the second
14 paragraph on the page after Representative England
15 said, "It would appear that District 7 would look
16 like that would need to be done," referring to an
17 RPV analysis.

18 He goes on, "So it appears to me that if
19 we're doing this in the logical way, that District 7
20 just -- as it appears on a map, would produce a
21 certain percentage."

22 And he asks, "And what is the
23 relationship between the 54 percent that you're
24 citing and the actual results or potential results
25 of a racial polarization study? What is the

Page: 84

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. It's just one question, but it's long.
2 I'm asking you if you still have no clue
3 with respect to the question that Representative
4 England asked you and that you just read?

5 A. Here -- here's the issue.
6 Representative England apparently was targeting that
7 number of 54 percent of BVAP as if it were some sort
8 of threshold of do or die.

9 And even the courts, to my knowledge,
10 have never come up with a number that says you've
11 got to have this percent or you can't go below this
12 percent. It's never happened.

13 So when somebody picks out a number of
14 54 percents and says that's good or bad, well,
15 Congresswoman Sewell was happy with it. And she's
16 probably got a whole lot more information on her
17 electability in her own district than I have.

18 Q. So I'm just going to point you back to
19 Page 17 of the transcript of your October 26th
20 meeting of the reapportionment committee where
21 before Representative England brought that up, you
22 had said, "Because of the black voting age
23 population in Congressional District 7, there was
24 not one needed," referring to an RPV analysis,
25 because it was over 54 percent BVAP.

Page: 86

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 relationship between the two?"

2 A. Let me --
3 Would you read your response?

4 A. I'm sorry. I thought you were done. Go
5 ahead.

6 Q. Would you please read your response?

7 A. Let me read this sentence you just read.
8 So I would like to request that the study be done on
9 District 7. And what is the relationship between
10 the 54 percent that you're citing and a racial
11 polarization study? What is the relationship?

12 My response is, "I got no clue."

13 Q. Does this seem like an accurate
14 representation of your conversation in the meeting,
15 the October 26 reapportionment committee meeting?

16 A. I think it's fairly accurate. I've
17 certainly found some errors in here. But it's
18 probably close enough.

19 Q. And do you still have no clue what the
20 relationship between the 54 percent number that you
21 cited earlier as not a threshold by which you would
22 consider an RPV analysis and the actual or potential
23 results of a racial polarization analysis?

24 A. Okay. Give me -- break that up. That
25 was a couple of questions. Give me the first one.

Page: 85

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 What did you mean by that?

2 A. What I meant by that was it didn't look
3 like it was -- that a minority congresswoman was at
4 risk. If she wanted to be elected again -- and
5 apparently she does -- there was nothing to suggest
6 it was close enough to think there was a threat to
7 her reelection.

8 Q. And how is that related to the black
9 voting age population in District 7 at 54 percent?

10 A. Well, most of the voters are a minority.

11 Q. And so you were assuming that black
12 voters would vote for a black representative?

13 A. That's pretty -- a pretty safe bet here
14 in Alabama.

15 Q. And where did the 54 percent number come
16 from?

17 A. Those -- those numbers are generated by
18 the software when the district is drawn. But they
19 are generated after the district is drawn.

20 Q. Did you talk to Representative Sewell
21 about the black voting age population in her
22 district?

23 A. No, I did not.

24 Q. Did you talk to Representative Sewell
25 about the congressional map?

Page: 87

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. No, I did not.

2 Q. How do you know that Representative

3 Sewell was okay with the district, as you suggested,

4 based on the BVAP?

5 A. I was told that by the map drawer who

6 interviewed Representative Sewell I think once in

7 person and once virtually. Or it may have been a

8 staff person. But they were okay with the district.

9 Q. So you wanted to ensure that the BVAP in

10 districts with a minority candidate representing

11 them was not too low?

12 A. Correct.

13 Q. Did you take any steps to ensure that

14 the BVAP in any district was not too high?

15 A. Not to my knowledge.

16 Q. Who drew the maps for you in 2021?

17 A. Randy Hinaman.

18 Q. What is Randy Hinaman's role in the

19 redistricting process?

20 A. He's the map drawer.

21 Q. When did you first meet with Mr. Hinaman

22 about the redistricting cycle in 2021?

23 A. In the spring of 2021, I guess. I

24 don't -- I don't remember an exact date.

25 Q. Who did you meet with Mr. Hinaman with?

Page: 88

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. You know, he -- I don't know the answer

2 to that.

3 MS. SADASIVAN: Would you mind if we

4 take a five-minute break?

5 THE VIDEOGRAPHER: We are off the

6 record. The time is 4:26 p.m.

7 (Recess was taken.)

8 THE VIDEOGRAPHER: We are back on the

9 record. The time is 4:37 p.m.

10 Q. Senator McClendon, thank you again for

11 sitting for the deposition and for your time.

12 Following up on McClendon Exhibit 6

13 where we were discussing the quote where you said

14 that because of the black voting age population in

15 Congressional District 7, there was not one needed

16 with respect to an RPV analysis because the district

17 was over 54 percent BVAP. That was the October 26th

18 meeting of the reapportionment committee.

19 Did Mr. Walker tell you that a racial

20 polarization analysis was unnecessary because

21 District 7 had a BVAP of 54 percent?

22 MR. WALKER: Object on the basis of

23 attorney-client privilege.

24 Q. Were you told that a racial polarization

25 analysis was unnecessary because District 7 had a

Page: 90

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. I don't remember who was there.

2 Q. What was discussed?

3 A. Pardon me? What was what?

4 Q. What did -- what did you all discuss?

5 A. I would just guess. And I would say we

6 probably discussed when are we going to see the data

7 so we can go to work.

8 Q. Did you provide any instructions to

9 Mr. Hinaman in the spring of 2021?

10 A. No.

11 Q. Why not?

12 A. He was -- he was more experienced than

13 me.

14 Q. Did you provide Mr. Hinaman with any

15 materials throughout any of the process of him

16 drawing the 2021 Alabama maps?

17 A. No.

18 Q. Why?

19 A. There was no need to.

20 Q. Why was there no need to?

21 A. Well, he was the map drawer. He knew

22 his job.

23 Q. Where was his job description?

24 A. Where was his job description?

25 Q. Defined.

Page: 89

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 BVAP of around 54 percent?

2 A. I was told that in any of the districts

3 that were drawn that needed this additional

4 analysis, it had been requested.

5 Q. Can you repeat your answer, please?

6 A. I was told that any of the districts

7 that needed additional analysis, that that analysis

8 had been requested.

9 Q. And were you told which districts

10 required analysis?

11 A. No.

12 Q. Did you know any criteria for which

13 districts required an analysis?

14 A. I did not know the criteria.

15 Q. When did you determine that your plan

16 didn't violate the Voting Rights Act?

17 A. Well, sometime -- sometime prior to

18 submitting it to the redistricting committee for

19 consideration. That was like part of the process,

20 to make sure we were in compliance before

21 introducing it for consideration for the other

22 committee members.

23 Q. And when did you submit the

24 congressional redistricting bill for consideration

25 by the reapportionment committee?

Page: 91

21-cv-01531
11/12/2024 Trial
Plaintiffs Exhibit 389

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. The date -- the date we met that Tuesday
2 prior to the special session convening on Thursday.
3 Q. So you determined before the October
4 26th meeting that your map, the congressional
5 redistricting map you introduced, didn't violate the
6 VRA?
7 A. I felt confident that was the case, yes.
8 Q. Do you know if an RPV analysis was
9 conducted for Congressional District 1?
10 A. Do I know if it was conducted? Is that
11 your question?
12 No, I don't know if it was conducted.
13 Q. Who would know?
14 A. The attorney.
15 Q. And who is that?
16 A. His name is Dorman Walker.
17 Q. When did the special legislative session
18 on redistricting begin in Alabama in 2021?
19 A. The Thursday of that week following the
20 redistricting committee meeting. And I don't
21 remember what the date was.
22 Q. Did you do anything to prepare for the
23 special session?
24 A. Well, yes.
25 Q. What did you do to prepare for the

Page: 92

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. May have been introduced on the senate
2 floor. Introduced on the senate floor.
3 Q. So I am dropping into the chat and I'll
4 ask Mr. Walker to mark as Exhibit 7 or McClendon
5 Exhibit 7 a document that is the transcript of the
6 senate floor debate in Alabama on November 3, 2021.
7 Do you recognize the document? It's on
8 my screen so you can see it.
9 MR. WALKER: Oh, okay. This is 7?
10 MS. WELBORN: Yes.
11 MS. SADASIVAN: Yes, sir.
12
13 (Plaintiff's Exhibit 7 was
14 marked for identification.)
15
16 Q. And I have the exhibit pulled up, as
17 well. Take a minute to look at it, Senator
18 McClendon, please.
19 A. What did you say?
20 Q. Will you just take a minute to look at
21 the transcript, and at the end confirm yes or no
22 whether it generally appears accurate of the senate
23 floor debate in 2021 on the various redistricting
24 bills in the special legislative session.
25 A. Where does this start dealing with the

Page: 94

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 special session?
2 A. I tried to get the -- first, we handled
3 -- the senate handled the senate and the BOE map
4 first. And so I wanted my information in place in
5 my hand that I would present to the standing
6 committee and ultimately to the senate floor. So my
7 preparation was to have my bullet points convenient
8 before those meetings.
9 Q. Did you review any maps of two majority
10 black districts in 2021?
11 A. No.
12 Q. Did you have the opportunity to vote on
13 any two majority black congressional district plans
14 in 2021?
15 MR. WALKER: Did you say have the
16 opportunity to vote?
17 MS. SADASIVAN: Yes.
18 MR. WALKER: Okay.
19 A. There may -- I don't -- and I'm not
20 certain. But I think one was introduced on the
21 senate floor. But I'm not sure.
22 Q. You think that a bill creating two
23 majority minority districts was introduced on the
24 senate floor?
25 MR. WALKER: May.

Page: 93

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 congressional plan?
2 Q. Let me just scroll down.
3 I guess my question was initially -- and
4 I'm seeing on Page 27 there's the beginning of a
5 discussion between Senator McClendon and Senator
6 Singleton.
7 But I had first asked, Senator
8 McClendon, if you could look through the transcript
9 and see if it generally appears accurate of the
10 senate floor debate on November 3, 2021, in the
11 Alabama senate. I will represent to you that it's
12 the transcript from the video that we received.
13 A. And I'll accept that, that it is a
14 transcript of the senate floor.
15 Q. And in this transcript, you vote against
16 a map introduced by Senator Singleton and Senator
17 Hatcher. Can you --
18 A. What page is that on?
19 Q. I believe the motion is -- the
20 substitute was offered by Senator Hatcher on Page
21 39.
22 A. Okay.
23 Q. And Senator McClendon moved it for an up
24 or down vote on Page 40, and then votes against it
25 on Page 41. Do you see that?

Page: 95

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. Okay. Yeah, I do. I do.

2 Q. Can you tell me why you voted against

3 Senator Hatcher's two majority minority district

4 plan?

5 A. You know, if I recall correctly, his map

6 pitted -- put two incumbent congressional members in

7 the same district.

8 Did you hear me?

9 Q. I can. I asked you why you voted

10 against Senator Hatcher's plan.

11 A. And my response was that, among other

12 things, the most blatant thing and easiest to notice

13 was that he had put two incumbents in the same

14 district.

15 Q. You agree that the black voting age

16 population of the state of Alabama is approximately

17 27 percent of the state?

18 A. Approximately.

19 Q. Did that factor in to how you voted on

20 Senator Hatcher's map?

21 A. It had nothing to do with it.

22 Q. Did you have the opportunity to vote on

23 Senator Singleton's proposed map?

24 A. I did.

25 Q. And how did you vote?

Page: 96

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. Yes, sir.

2 A. Well, you always have to assume that

3 federal law supersedes state law. But in this case,

4 it was -- it didn't matter. It was just -- it was

5 an -- it was an inappropriate situation.

6 Actually, what happens when you pit two

7 incumbents, suddenly the redistricting committee is

8 picking winners and losers. And that should be up

9 to the voters.

10 Q. The reapportionment committee -- just to

11 go back a little bit to the public hearings that you

12 held on redistricting. How many were there?

13 A. Still 28.

14 Q. And how many occurred between the hours

15 of 9:00 and 5:00?

16 A. Well, I don't know. I would have to --

17 I would have to go back. I think most -- most of

18 them did, yeah.

19 Q. If I say the McClendon exhibit, I'm

20 afraid I will get it wrong. But it has the schedule

21 of the public hearings.

22 A. That would be Number 4.

23 Q. Thank you, sir.

24 A. Okay. What is your question, now?

25 Q. I asked how many of the 28 public

Page: 98

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. A nay.

2 Q. And why did you vote nay?

3 A. I think the blatant problem with his map

4 was that no minority candidate had a majority

5 district. He had --

6 Q. And when you say a minority candidate

7 had a majority district, what do you mean?

8 A. I think he drew two districts they

9 called opportunity districts. But no minority

10 candidate had a majority of the voters in either of

11 those districts.

12 Q. With respect to Senator Hatcher's map,

13 you said you voted against it because two incumbents

14 were paired?

15 A. I think that is -- I think that's

16 correct.

17 Q. And what is -- in terms of your

18 understanding of the law, what is a more important

19 criteria for a map proposed by the Alabama

20 legislature? Compliance with federal law and the

21 Voting Rights Act or ensuring incumbents are not

22 paired?

23 A. You're asking me to say what's most

24 important among those three or what takes precedent?

25 Is that what your question is?

Page: 97

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 hearings occurred between the hours of 9:00 a.m. and

2 5:00 p.m.

3 A. Most all of them did. I guess there's

4 one exception to that. And that would have been the

5 meeting at the state house in Montgomery.

6 Q. How many public hearings were held at

7 the same time as another public hearing?

8 A. Zero.

9 Q. In other words, how many public hearings

10 overlapped with another one of the public hearings?

11 A. Zero.

12 Q. No public hearings occurred at the same

13 time as another public hearing?

14 A. Correct.

15 Q. And when did you finalize the times of

16 the public hearings?

17 A. It would have been sometime in July,

18 early July. Actually, it was done twice. The first

19 time, it was targeted to be completed by June 30th.

20 And then we added six more, and that just tacked

21 them on the end. So it was in the early part of

22 July.

23 Q. So you added six more why?

24 A. Representative Hall requested it.

25 Q. How did she request additional hearings?

Page: 99

21-cv-01531
11/12/2024 Trial
Plaintiffs Exhibit 389

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. Email.

2 Q. Sir, I am going to drop in the chat and

3 I will share my screen and ask Mr. Walker if he

4 could please mark this as, I believe, McClendon

5 Exhibit 7.

6 MR. WALKER: Eight.

7 MS. SADASIVAN: Eight. Gosh. Why am I

8 always one off? It's Friday.

9 Q. So I'm showing you what I've asked

10 Mr. Walker to mark as McClendon Exhibit 8. I'm

11 scrolling down to the bottom where it says RC

12 045704.

13 MS. WELBORN: Kathryn, can you scroll

14 all the way up? We don't know what the document is.

15 MS. SADASIVAN: So the document says RC

16 045697. This was produced by Mr. Walker yesterday.

17 MS. WELBORN: What does it look like on

18 the first page so we can figure out which one it is?

19 MS. SADASIVAN: It looks like this.

20 MR. WALKER: Okay.

21

22 (Plaintiff's Exhibit 8 was

23 marked for identification.)

24

25 A. Is this -- okay. Exhibit 8.

Page: 100

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 locations that would not require constituents to

2 travel more than one county. However, the proposed

3 location map will require interested parties to

4 travel significant distances to participate."

5 Going down, it says, "While it may not

6 be feasible for all committee members to attend

7 every public hearing, the proposed schedule requires

8 members to 'pick and choose' hearings and will not

9 have the full benefit of the public hearing

10 testimony and discussion of any alternative maps

11 introduced."

12 On the second page -- on the following

13 page, which is Bates number RC 045713,

14 Representative Hall says, "In addition, the timing

15 of each hearing is unsatisfactory. Hearings held

16 during working days cannot be viewed objectively as

17 providing the opportunity for public input."

18 How did you respond to Representative

19 Hall's concerns about the timing of the public

20 hearings?

21 A. I think I called my attorney and

22 basically said, "How do you want to handle this?

23 What do you think we need to do?" And --

24 MR. WALKER: Do not discuss what I said

25 to you.

Page: 102

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 MR. WALKER: She's turned it back a page

2 or two.

3 Q. So if you look on Page 12 of the exhibit

4 that Mr. Walker handed you, it's marked at the

5 bottom with Bates number RC 045712.

6 A. 712. Okay. I've got 712. What page?

7 Q. 045712. It's page 12 of that PDF.

8 A. 712. I've got Page 1.

9 Q. Do you recognize on Page -- I guess the

10 page that we just landed on, did you recognize the

11 document that you're looking at, Mr. McClendon?

12 A. Yes. Well, I have it in front of me.

13 Let me look at it.

14 Yes, I've seen this before.

15 Q. Where have you seen it before?

16 A. I probably -- I probably received a copy

17 of it, of the email.

18 Q. What is this that you're looking at?

19 A. This is Representative Hall, I guess.

20 Yes. This is when she made a request for additional

21 meetings. And she sent that to the staff office and

22 they forward a copy to me.

23 Q. So in her email that we're looking at

24 right now, Representative Hall says, "During the May

25 5th committee meeting, members agreed to hearing

Page: 101

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. But I cannot discuss what he said to me.

2 Q. You stated earlier that the time and

3 manner of the public hearings is not governing by

4 Alabama law, correct?

5 A. Not to my knowledge.

6 Q. So when Representative Hall asked for

7 other times for the public hearings, was there any

8 legal constraints to the times that you could select

9 for the public hearings?

10 A. Not to my knowledge.

11 Q. Why did you not change the times of the

12 public hearings based on this email?

13 A. That was being -- we used our staff and

14 we used our liaison from the community college

15 system to contact the local community colleges and

16 locations and to see what would work out for

17 everybody involved. And that's how it came about.

18 MS. SADASIVAN: I think that's all the

19 questions I have. The Singleton and the Caster

20 plaintiffs may have questions.

21 MR. OSHER: I have a few questions.

22 Jim, if you want to go first for Singleton, you're

23 more than welcome to. He might not be on.

24 Okay. Senator, give me one moment, sir.

25

Page: 103

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 EXAMINATION BY MR. OSHER:
 2 Q. Senator McClendon, can you hear me?
 3 A. I can hear you very well.
 4 Q. Oh, well that's a surprise. That never
 5 happens. Thank you for your time today. I just
 6 have a few questions.
 7 I believe -- am I correct that you were
 8 in the room when Representative Pringle was taking
 9 his deposition?
 10 A. You are correct.
 11 Q. Or I should say was having his
 12 deposition taken.
 13 And so I assume that you heard the
 14 questions that I asked him. Is that correct?
 15 A. That is correct.
 16 Q. I'm just going to ask you the same
 17 questions.
 18 How long have you been serving in the
 19 Alabama legislature?
 20 A. 19 years.
 21 Q. 19 years. And have you been a member of
 22 the republican party that whole time?
 23 A. Well, I've always run as a republican.
 24 And I believe I've been a dues-paying member of the
 25 county republican group that whole time.

Page: 104

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. And have you -- have you always been a
 2 member of the republican party?
 3 A. Well, "always been" goes back a long
 4 way. I think I've been a member of the republican
 5 party as long as I've been a candidate or an elected
 6 official.
 7 Q. And how long does that date back until
 8 in the -- in the past?
 9 A. 2001.
 10 Q. Okay. Based your 19 years serving in
 11 the legislature, in your view, do the views of the
 12 members of the democratic party in Alabama generally
 13 differ from the members of the republican party in
 14 Alabama when it comes to the issue of removing
 15 confederate monuments from public spaces?
 16 A. You know, I think if you make that broad
 17 and say generally, I think I can agree with that
 18 statement. There -- there are definitely
 19 exceptions. But I think with the "general" in
 20 there, I can say I generally agree with your
 21 statement.
 22 Q. So the answer to my question was yes?
 23 A. Yes.
 24 MR. WALKER: Objection to form. He
 25 answered that he can generally agree.

Page: 105

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. My question was do the members of the
 2 democratic party, generally do their views generally
 3 -- I should start over.
 4 Do the views of the members of the
 5 democratic party generally differ from the views of
 6 the members of the republican party in Alabama
 7 generally when it comes to removal of confederate
 8 monuments in public spaces?
 9 A. I think I can agree with that.
 10 Q. You think you can agree? Can you give
 11 me a yes or no answer on that question?
 12 MR. DAVIS: Objection, asked and
 13 answered.
 14 THE WITNESS: So objection, what does
 15 that mean for me?
 16 MR. WALKER: That means you don't
 17 answer.
 18 Q. Well, it doesn't mean you don't answer.
 19 I believe that's a form objection.
 20 MR. WALKER: Excuse me. Forgive me.
 21 You're right. Sorry, Dan.
 22 MR. OSHER: That's okay.
 23 Q. Senator, if you wouldn't mind answering
 24 the question.
 25 A. Yes.

Page: 106

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 Q. Thank you. I appreciate it. A few
 2 more.
 3 Based on your 19 years in the Alabama
 4 legislature, do the views of the members of the
 5 democratic party in Alabama generally differ from
 6 the members of the republican party in Alabama when
 7 it comes to the issue of affirmative action?
 8 A. And we'll get back to the discussion you
 9 had earlier on affirmative action. I'm not even
 10 exactly sure of a definition of affirmative action.
 11 I remember hearing that term some years ago. But it
 12 hasn't been around in a while. So I'm real hesitant
 13 about answering that question.
 14 One other thing I would like to point
 15 out. You're talking about members of the democratic
 16 party, members of the republican party, right?
 17 That's who you're asking me about.
 18 Well, I don't attend any of the
 19 democratic party meetings. Now, I know a lot of
 20 democrats that are in the legislature. So I'm more
 21 likely to have a feeling for a democratic rather
 22 than a member of the democratic party. Do you
 23 understand what I'm saying?
 24 Q. So let me ask you this: In your 19
 25 years serving in the -- in the Alabama legislature,

Page: 107

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 have you worked with your democratic party -- your
2 democratic party colleagues on issues related to
3 pending legislation?
4 A. Yes.
5 Q. And have you worked with republican
6 members of the Alabama legislature on pending
7 legislation and other issues?
8 A. Yes.
9 Q. And in that time, have you gained a
10 general view of what the democratic party in Alabama
11 supports and what the republican party in Alabama
12 supports?
13 A. Yes.
14 Q. Okay. So you -- in terms of affirmative
15 action, let's define affirmative action as giving
16 preference to individual -- considering individual
17 race when making certain decisions about admission
18 to programs or access to benefits.
19 Using that definition, based on your
20 experience in the legislature, do the views of the
21 democratic party in Alabama generally differ from
22 the members -- the views of the members of the
23 republican party in Alabama?
24 A. I really don't have an opinion on that.
25 And the reason is the issue simply has not come up,

Page: 108

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 business out. I see the party as these two
2 organizations. These people I know claim to be
3 democrats. Some of them claim to be republicans.
4 Whether they belong to -- are active in a party or
5 not, I have no idea.
6 Now let's go back to the heart of your
7 question, and I'll try to answer it. With that in
8 mind, ask me your -- ask me your question. What is
9 the topic here?
10 Q. The fourth topic that I'm asking if the
11 members -- if the views of the members of the
12 democratic party generally differ from the views of
13 the members of the republican party generally.
14 Based on your experience working in the
15 legislature with members of both parties, do their
16 views generally differ when it comes to the issue of
17 whether there is a significant amount of
18 discrimination against black residents of Alabama
19 today?
20 A. Yes.
21 MR. OSHER: Thank you very much. That's
22 all I have for you. Thank you for your time,
23 Senator.
24 A. You're very welcome.
25 MR. WALKER: Are we done?

Page: 110

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 it's not in front of me, and I have no experience
2 with members of the democrats or the republicans on
3 that issue. So I can't speak for something that
4 hasn't happened.
5 Q. Sure.
6 Based on your experience in the Alabama
7 legislature, do the views of members of the
8 democratic party in Alabama generally differ from
9 the members of the republican party in Alabama when
10 it comes to criminal justice reform?
11 A. Okay. And your question is they have
12 disparate or different views? Republicans have
13 different views from democrats on criminal justice
14 reform? That's your question, correct?
15 Q. As a general matter, correct.
16 A. As a general matter, I agree with that
17 statement.
18 Q. And based on your experience in the
19 legislature, do the views of the members of the
20 democratic party in Alabama differ from the views of
21 the members of the republican party in Alabama when
22 it comes to whether there is a significant amount of
23 discrimination against black residents of the state
24 today?
25 A. Once again, I need to take a party

Page: 109

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 MR. DAVIS: Any questions from the
2 Singleton plaintiffs?
3 I've got just a couple.
4 EXAMINATION BY MR. DAVIS:
5 Q. Hello, Senator.
6 A. Hello.
7 Q. Jim Davis representing Secretary
8 Merrill.
9 Senator, how many members are there of
10 the Alabama senate?
11 A. 35.
12 Q. And do they all have a vote on
13 legislation?
14 A. Yes, they do.
15 Q. Does that include redistricting
16 litigation?
17 A. That is correct.
18 Q. Excuse me. I said "litigation." I
19 meant legislation.
20 A. Legislation.
21 Q. Do all senators' votes count the same?
22 A. Yes.
23 Q. Do you know why any other member of the
24 Alabama senate voted for or against a redistricting
25 plan?

Page: 111

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 A. No. That's an individual decision.

2 Q. And how many members are there of the

3 Alabama house of representatives?

4 A. 105.

5 Q. And they all have votes on legislation?

6 A. They certainly do.

7 Q. Including redistricting legislation?

8 A. Correct.

9 Q. And their votes all count the same as

10 one another's?

11 A. That's correct.

12 Q. Do you know why any member of the

13 Alabama house of representatives voted for or

14 against any plan, any redistricting plan?

15 A. No. That's an individual decision.

16 Q. Did you instruct Randy Hinaman to be

17 sure to include a majority black district in an

18 Alabama congressional plan draft?

19 A. I did not.

20 Q. Did you decide ahead of time that

21 Alabama's plan must include a majority black

22 district?

23 A. I did not.

24 Q. Was your understanding that those

25 districts, when drafted, would be done so without

Page: 112

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 now?

2 MR. WALKER: Yeah, sure.

3 THE VIDEOGRAPHER: This ends the

4 deposition of Jim McClendon. The time is now

5 5:12 p.m.

6

7 (DEPOSITION ENDED AT 5:12 P.M.)

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Page: 114

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 consideration of race?

2 A. That is correct.

3 Q. To the best of your knowledge, was that,

4 in fact, how it was done?

5 A. That is exactly how it was done.

6 MR. DAVIS: Thank you, Senator.

7 A. You're welcome.

8 MR. WALKER: Do we have anything

9 further?

10 MS. SADASIVAN: Nothing from the

11 Milligan plaintiffs. Thank you, Senator, for your

12 time and sitting for the deposition. I appreciate

13 it.

14 MR. OSHER: Nothing from the Caster

15 plaintiffs. Thank you all.

16 MR. WALKER: Kathryn, I need to get to

17 you, in addition to my privilege log, the final

18 statement of -- you know, the sheet where I state

19 the request for production and then I state

20 underneath the documents. Can I get that to you on

21 Monday? You've got all the documents. I just need

22 to give you the sheet that says which ones refer to

23 which of your requests.

24 THE REPORTER: Are we on the record?

25 MS. WELBORN: Can we go off the record

Page: 113

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

1 STATE OF ALABAMA)

2 JEFFERSON COUNTY)

3

4 I hereby certify that the above

5 proceedings were taken down by me and transcribed by

6 me using computer-aided transcription and that the

7 above is a true and correct transcript of said

8 proceedings taken down by me and transcribed by me.

9 I further certify that I am neither of

10 kin nor of counsel to any of the parties nor in

11 anywise financially interested in the result of this

12 case.

13 I further certify that I am duly

14 licensed by the Alabama Board of Court Reporting as

15 a Certified Court Reporter as evidenced by the ACCR

16 number following my name found below.

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Page: 115

21-cv-01531
11/12/2024 Trial
Plaintiffs Exhibit 389

assign 2:12
 assistance 40:12
 Assistant 5:3
 assume 12:12
 98:2 104:13
 assuming 87:11
 astray 29:22
 attempt 42:22
 attempting 73:18
 attend 102:6
 107:18
 attention 23:6
 Attorney 3:5,
 12, 19 4:2, 9
 17 5:3, 4, 12
 7:20 12:17, 21,
 25 13:5 19:12
 20:7 28:12, 24,
 25 29:18, 25
 30:19, 24 31:6,
 12 37:22 41:8
 42:2 53:7, 11,
 14, 24 54:13,
 19, 24 55:7, 12
 56:6, 13 66:1
 67:7 68:4, 11,
 16 81:10, 11
 82:6 92:14
 102:21
 attorney-client
 53:12 90:23
 attorneys 7:18
 8:9 82:21
 attributed 50:7
 audio 8:5, 7
 66:23
 available 9:14
 40:10 52:21
 Avenue 3:7 5:5

 < B >
 back 9:7
 19:11 22:12
 44:4 51:16
 56:9 58:10
 73:9 84:10
 86:18 90:8
 98:11, 17
 101:1 105:3, 7
 107:8 110:6
 background 14:15
 bad 86:14
 Balch 1:22
 5:13 7:23
 Ballroom 62:16
 based 12:14
 28:3 32:23
 69:25 88:4
 103:12 105:10
 107:3 108:19
 109:6, 18
 110:14
 basically 56:24
 102:22
 basis 69:22
 81:2 90:22
 bat 74:8
 Bates 101:5
 102:13
 began 75:2
 beginning 7:12
 37:25 39:1
 49:23 50:9
 80:6, 25 95:4
 begins 28:13
 behalf 8:12
 belief 40:24
 beliefs 23:23
 25:24 49:16
 50:2, 8, 13
 58:21 74:19,
 23 75:7 84:3
 95:19 100:4
 104:7, 24
 106:19
 believed 48:17
 belong 110:4
 belt 72:9, 15,
 18, 20, 24 73:3,
 5
 benchmarks
 47:24 48:3
 benefit 102:9
 benefits 108:18
 best 30:3
 113:3
 bet 87:13
 better 14:16
 52:11 72:25
 big 28:21
 bigger 28:2
 bill 21:3, 11,
 24 22:1, 16
 40:4, 17 45:18,
 23 46:1, 2, 3
 91:24 93:22
 bills 21:17, 19,
 25 45:22
 63:15 75:25
 105:24
 Bingham 1:23
 5:13 7:24
 Birmingham 7:2
 8:2 16:3, 9
 115:24
 birth 14:17
 bit 14:16
 52:9, 11 53:17
 79:5 98:11
 black 43:6, 13,
 17 62:4 72:9,
 15, 18, 20, 24
 73:3, 5 80:7,
 9, 14 81:5
 86:22 87:8, 11,
 12, 21 90:14
 93:10, 13
 96:15 109:23
 110:18 112:17,
 21 22:23
 blatant 96:12
 97:3
 board 38:11, 15
 56:23 115:14
 body 20:9
 BOE 46:1 71:4
 93:3
 born 15:22
 bottom 100:11
 101:5
 Box 4:11
 break 13:15
 14:8, 11 49:7,
 11 51:12
 85:24 90:4
 breaking 51:2
 Brian 47:17
 Broad 4:4
 105:16
 brought 46:8, 9,
 11, 12 78:25
 86:21
 bullet 19:6
 93:7
 Bureau 38:9
 54:11
 business 110:1
 Buskey 47:18,
 22 48:18
 BVAP 86:7, 25
 88:4, 9, 14
 90:17, 21 91:1

 < C >
 California 3:8
 call 34:20
 56:15 57:1
 called 41:18
 63:14 97:9
 102:21
 candidate 88:10
 97:4, 6, 10
 105:5
 candidates 25:5
 capacity 9:19
 care 35:11
 career 24:15
 carefully 54:16
 carried 49:24
 carry 31:1, 2
 CASE 1:7 7:14
 91:3 17:24
 18:5, 6 19:7
 23:14, 22, 23
 24:4, 9 46:21
 47:17 77:15
 92:7 98:3
 115:12
 cases 10:15
 30:3 31:5
 66:18 67:8
 77:21
 CASTER 4:15
 8:15 103:19
 113:14
 cause 7:8
 cell 13:14
 census 32:23
 33:12 38:8, 9,
 13 40:8 54:11,
 14, 18, 25
 Center 62:16
 certain 30:14
 37:19 84:21
 93:20 108:17

Jim McClendon
12/17/2021

21-cv-01531
11/12/2024 Trial
Plaintiffs Exhibit 389

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

conservative 25:15, 16, 18, 20, 22 conservatives 25:24 consider 43:9 46:4, 14 56:16 60:17 62:4 71:19 73:5 85:22 considerable 77:11 consideration 40:6 52:22 63:14 73:12, 21 91:19, 21, 24 113:1 considered 21:18 42:6 52:19 considering 62:7 108:16 constituents 102:1 constitution 38:5, 6 39:17 65:12 67:11 constraints 103:8 construed 39:15 consulted 41:8 contact 103:15 continuing 16:12 50:10 continuum 55:2 contrary 39:17 convenient 93:7 convening 74:17 92:2 conversation 13:18 67:16 68:6 79:16 85:14 conversations 69:17, 23 converts 27:24 coordinate 55:21 copy 20:4 101:16, 22 core 42:22 73:10, 11, 19	Correct 14:20 15:1, 19 16:15 18:25 23:12, 13 28:4 32:8 33:13 44:24 46:10 54:2 75:4, 7 88:12 97:16 99:14 103:4 104:7, 10, 14, 15 109:14, 15 111:17 112:8, 11 113:2 115:7 correcting 29:7 correctly 96:5 counsel 1:18 2:10, 11 7:6 11:15 18:8, 10 115:10 count 111:21 112:9 counted 66:15 counties 72:14, 17, 18 73:8 County 17:7 72:7 102:2 104:25 115:2 couple 18:15 55:25 85:25 111:3 course 27:5 29:24 31:1 33:3 57:15 66:10 courses 16:8, 10, 13 COURT 1:1 2:5 7:1, 15 11:13, 19, 20 15:4 19:14 20:4 30:3 31:5 35:5 36:1 44:7 46:24 61:4 63:17 66:18 77:21 115:14, 15 courtroom courts 30:5 31:5 86:9 cover 19:5 created 47:19	52:4, 14 creating 93:22 criminal 109:10, 13 criteria 70:18 91:12, 14 97:19 current 32:21 currently 17:10, 12 26:5, 21 cut 26:13 37:6 cutting 26:14 cycle 23:11 84:6 88:22 < D > DAN 4:16 8:15 106:21 data 32:23 33:3 35:2 38:8 40:9 53:18, 20 54:10, 14, 25 57:16 70:14 73:12, 21, 23, 24 74:1 77:16 89:6 date 7:4, 16 14:17 30:2 57:20 58:21 59:4 60:5 64:15 70:11 75:22 88:24 92:1, 21 105:7 dates 33:19 55:22 58:18 63:6 74:18 DAVIS 5:2 6:4 7:20 18:19, 24 22:22 36:15 51:2, 5 106:12 111:1, 4, 7 113:6 day 58:21 days 102:16 DC 3:22 4:20 deadline 59:7, 9, 10, 13, 21, 23, 25 deal 18:6 dealing 94:25	debate 20:25 21:2, 11 94:6, 23 95:10 December 1:24 7:7, 16 115:17 decennial 38:8 decide 42:10 53:16 59:7 74:2 112:20 decided 81:15 82:9 deciding 32:22 decipher 48:21 decision 31:20 57:4 81:8 112:1, 15 decision-making 55:8 decisions 32:24 53:25 108:17 decrease 33:5 DEFENDANT 5:1 9:18 10:12 47:17 Defendants 1:12 5:9 Defense 3:13, 20 9:12 define 72:20 108:15 Defined 89:25 definitely 105:18 definition 71:7, 8, 10, 14 107:10 108:19 degree 16:2 delay 57:16, 17 delegation 33:2 34:15 42:13 45:17 56:23 60:13 69:13, 6, 8 democratic 105:12 106:2, 5 107:15, 15, 19, 21, 22 108:1, 2, 10, 21 109:8, 20 110:12 democrats 107:20 109:2, 13 110:3
---	---	---	--

Page: 5

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

education 16:12 26:23, 24 38:12, 16 56:23 Educational 3:13, 20 9:12 effect 2:4 65:9 effective 48:8 50:5 Eight 100:6, 7 either 97:10 electability 86:17 elected 20:21 24:16, 19, 20, 22 26:8 30:1 32:4, 5 70:15 87:4 105:5 election 78:12 elections 43:24 electoral 48:8 50:5 Elas 4:18 email 15:9, 12, 13 58:22 100:1 101:17, 23 103:12 employed 17:10, 12 employees 20:20 endeavor 64:20 ENDED 114:7 endorsed 25:5 ends 114:3 England 79:4, 8 83:11 84:14 86:4, 6, 21 ensure 66:6, 11 82:5 88:9, 13 ensuring 65:23 69:8, 12 97:21 entail 53:14 error 80:18 errors 85:17 essentially 28:10 established 38:16, 23 39:20 et 1:6, 10 7:13, 14 ethnic 39:14	evaluated 79:20 evaluation 77:16 EVAN 1:6 7:13 8:1 events 53:8, 22 everybody 41:17 63:11 103:17 evidence 2:14 evidenced 115:15 exact 33:23, 24 88:24 exactly 19:25 27:11 33:22 41:18 78:14 83:25 107:10 113:5 examination 7:8 9:9 104:1 111:4 examined 8:22 example 28:14 44:3 70:6 82:7 exception 99:4 exceptions 105:19 Excuse 106:20 111:18 exercise 48:8 50:5 83:19 exercised 83:6, 7 exercising 83:8 Exhibit 6:9, 11, 13, 15, 17, 19, 21, 23 19:15 35:5, 7, 22 36:2, 5, 7, 24 46:24, 25 47:9 49:22 51:19 61:5, 12 63:17, 18 64:3 70:17 76:15, 22 79:23, 24, 25 84:11 90:12 94:4, 5, 13, 16 98:19 100:5 10, 22, 25 101:3 100:18 exhibiting 73:19 exhibits 74:24 existing 32:17, 19 73:11	19 73:11 expect 18:16 experience 82:14, 15 108:20 109:1, 6, 18 110:14 experienced 89:12 experts 66:15 Expires 115:23 explaining 41:21, 22 express 44:10 79:13 expression 83:21 extent 70:21 extra 77:18 eye 41:12, 13 100:18 < F > Facebook 15:17, 18 fact 21:12 37:10 73:23, 24 74:14 77:19 113:4 factor 96:19 failure 50:12 fair 44:10 fairly 85:16 familiar 37:4 48:10 64:9 66:17 67:7 77:4, 6 far 36:16 50:11 68:2 70:5 fast 73:14, 16 feasible 102:6 Federal 7:4 38:8 97:20 98:3 feel 60:5 feeling 107:21 felt 83:19 92:7 figure 57:14 100:18 file 15:4 filed 7:15 final 59:4	61:7 113:17 finalize 99:15 Finally 14:8 financially 115:11 find 38:25 finish 12:1, 2 49:9 firm 35:16 first 10:1 24:16 25:14 26:8 37:6 55:25 57:11, 13, 18 63:7 67:7 78:3 81:20 85:25 88:21 93:2, 4 95:7 99:18 100:18 103:22 100:18 25:16 fishing 72:21 five 63:21, 22 five-minute 49:6 90:4 FL 3:14 flag 78:9 floor 19:7 20:24 21:1, 11, 21 93:6, 21, 24 94:2, 6, 23 95:10, 14 focused 62:19 follow 66:17 followed 40:21, 25 41:6, 8, 24 following 7:9 33:9, 11 38:14 40:17 41:1, 10 90:12 92:19 102:12 115:16 follows 8:23 force 2:4 foregoing Forgive 106:20 form 2:10 9:1 40:22 50:19 105:24 106:19 format 20:1 forward 47:18 56:20 101:22 found 72:12
---	---	--	---

Page: 7

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

demographer 31:17 41:21 67:13 demographics 42:25 43:1, 2, 3 department 20:15, 18 45:2 47:24 48:3 50:11 depend 82:13 dependent 66:1 deposed 10:3 23:16 DEPOSITION 1:9, 19 2:2, 3, 13 7:12 9:15, 18 11:10, 14 13:2, 12 17:25 18:13, 23 19:18 22:5, 14, 21 90:11 104:9, 12 113:12 114:4, 7 depositions 2:6 describe 47:3 description 89:23, 24 designate 58:8 determine 38:10 54:21 59:15, 23 66:19 67:4 91:15 determined 55:13 92:3 determining 60:1 DEUEL 3:18 8:13 develop 40:13 developed 59:25 Dial 32:11 D-I-A-L 32:13 die 86:8 differ 105:13 106:5 107:5 108:21 109:8, 20 110:12, 16 difference 20:16 27:17 different 27:4 70:1, 2 71:17	109:12, 13 diluting 65:9 dilution 39:13 direct 71:4 disapprove 34:16 disapproving 34:19 discrimination 77:18, 23 78:2 109:23 110:18 discriminatory 48:6 discuss 29:5 30:25 56:12 60:9, 12, 14 69:19 81:13 89:4 102:24 103:1 discussed 22:4 78:19, 22, 23 83:14, 15 89:2, 6 discussing 20:6 28:22 47:18 50:9 74:21 75:11 90:13 Discussion 8:8 30:14 95:5 102:10 107:8 discussions 28:14 disparate 109:12 distances 102:4 DISTRICT 1:1, 2 7:15, 16 24:23, 25 26:1 33:4 42:25 43:5, 12, 16 48:5 71:4 78:6, 7, 12 80:8 81:2, 6 84:7, 15, 19 85:9 86:17, 23 87:9, 18, 19, 22 88:3, 8, 14 90:15, 16, 21, 25 92:9 93:13 96:3, 7, 14 97:5, 7 112:17, 22 districting 39:16 52:3	districts 18:7 24:6, 10 38:12 39:10 42:19, 22 43:10 46:5, 15 47:19 50:24 51:7 52:5, 15 65:6 70:5, 19 73:10, 12, 19 88:10 91:2, 6, 9, 13 93:10, 23 97:8, 9, 11 112:25 doctrinate 16:4, 6 document 19:14, 17, 20, 25 20:5, 10, 12, 23 21:6 36:1, 8, 10, 21 37:2, 5, 8, 13, 14, 19 47:12, 12 61:5, 24, 25 64:6, 10 70:11 77:2 94:5, 7 100:14, 15 101:11 documents 13:17, 21, 22, 25 14:2, 3 19:1, 3 22:13, 15, 24 23:2 113:20, 21 doing 62:7 66:14 82:12 83:14, 25 84:19 DOJ 47:25 DORMAN 5:11 7:23 18:11 35:14 49:14 66:2 82:17 92:16 dosher@elias.law 4:21 Dowdy 8:2 dozen 58:25 draft 37:14 112:18 drafted 37:13, 15, 17, 19, 21 40:18 112:25 drafting 42:18 Drake 61:20 draw 74:5 75:11	drawer 30:24 33:1 42:2 53:8, 11, 14, 25 54:13, 19, 25 55:6, 13 56:7, 12 66:2 67:18 68:6, 12, 16 69:2 82:6 88:5, 20 89:21 drawing 32:15 34:9 41:9 43:9 68:24, 25 89:16 drawn 24:11 34:19 39:10 65:7 68:17 73:25 87:18, 19 91:3 draws 28:13, 25 29:19 30:20 drew 88:16 97:8 drop 19:13 61:1 63:16 76:10 100:2 dropped 36:12 dropping 35:4 46:20 94:3 dross@naacpldf.org 3:23 dues-paying 104:24 duly 8:22 115:13 duties 31:2, 3 dwalker@balch.com 5:16 < E > earlier 12:9 23:10 73:9, 18 85:21 103:2 107:9 early 99:18, 21 easiest 96:12 easily 36:17 east 72:11 EBENSTEIN 4:1 8:17
--	--	---	--

Page: 6

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

85:17 115:16 Foundation 4:3 four 18:21 fourth 110:10 four-year 26:2, 4 frame 55:18 franchise 48:9 50:6 Friday 100:8 front 36:2, 8 60:23 67:9 101:12 109:1 full 2:4 28:17 102:9 full-service 35:15 Fund 3:13, 20 9:12 21:23, 24 26:22, 23 FURTHER 21:8 9:23 81:15 113:9 115:9, 13 futile 57:15 futility 83:19 fuzzy 34:4 < G > gained 108:9 gathered 81:16 General 5:3, 4 21:23, 24 26:22 65:21 105:19 108:10 109:15, 16 generally 53:12 94:22 95:9 105:12, 17, 20, 25 106:2, 5, 7 107:5 108:21 109:8 110:12, 13, 16 General's 7:21 generated 87:17, 19 generically 30:11 geographic 72:10 Gerald 32:11, 12 gestures 11:21 getting 28:2	give 10:23 14:3 49:1 56:13 61:10 64:8 70:6 74:7 77:22 83:17 85:24, 25 103:24 106:10 113:22 given 20:3, 23 34:21, 24 giving 23:8 108:15 glanced 77:5 go 15:24 16:1 21:20 29:22 32:22 34:18 38:20 39:7 41:1 62:23 65:13, 23 66:16 66:14, 23 68:19 70:5 84:10 85:4 86:11 89:7 98:11, 17 103:22 110:6 113:25 goal 24:9 42:18, 24 43:5 75:24 goals 42:21 66:8 goes 27:23 50:12 84:18 105:3 going 8:5 9:23 14:11, 15 19:13 20:24 21:1, 11 22:12, 16 27:19 36:15 37:11 40:19 46:20, 23 49:4 53:9, 18, 19 56:4, 9 57:14 61:1 63:16, 18 73:9 76:10, 20 82:3 84:10 86:18 89:6 100:2 102:5 104:16 Good 9:10 37:18 52:25	69:10 70:25 79:5 86:14 Gosh 100:7 gotten 21:12 governing 59:18 103:3 governor 56:15 57:1 Greater 8:2 grounds 2:12 Group 4:18 44:9 104:25 guess 12:12 30:9, 10 44:15, 20 78:3 88:23 89:5 95:3 99:3 101:9, 19 guessing 34:6 guidance 34:21, 24 guidelines 6:12, 18 28:15 36:14, 20 37:11, 12 38:14, 23 39:5, 6, 15 40:20, 21, 25 41:2, 3, 6, 15, 17, 18, 20, 21 24 42:3 44:25 52:4, 14 64:1, 17 65:20 66:1, 4, 7, 17 70:8, 13 77:21 < H > half 57:9 58:25 Hall 6:24 58:15 59:5 80:3, 12, 25 83:12 99:24 101:19, 24 102:14 103:6 Hall's 102:19 hand 93:5 handed 101:4 handle 102:22 handled 93:2, 3 handling 21:24 Hang 21:5 happen 81:12	happened 21:23 86:12 109:4 happens 98:6 104:5 happy 35:17 86:15 hard 52:7 61:18 Hatcher 95:17, 20 Hatcher's 96:3, 10, 20 97:12 health 26:22, 25 hear 12:17, 24, 25 68:10 96:8 104:2, 3 heard 68:9, 11 69:23 104:13 hearing 8:4 99:7, 13 101:25 102:7, 9, 15 107:11 hearings 33:7, 14, 17 55:14, 18, 21, 23 56:7, 21 58:6, 12, 18 59:8, 16, 19, 23 60:2, 9, 15, 18 61:7 62:1, 6 98:11, 21 99:1, 6, 9, 10, 12, 16, 25 102:8, 15, 20 103:3, 7, 9, 12 heart 110:6 held 8:8 60:19 63:13 98:12 99:6 102:15 Hello 111:5, 6 help 28:16 29:25 36:18 52:9 53:8 55:20 62:12 helpful 46:21 helps 48:13 hereinafter 38:18 hesitant 107:12 high 15:24 88:14 highly 83:13
---	--	---	---

Page: 8

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

Hinaman 88:17, 21, 25 89:9, 14 112:16	important 11:18, 24 29:25 41:20 97:18, 24	interested 102:3 115:11 interests 71:6 interim 21:18, 19 27:18 interpreted 30:5 interviewed 98:5 inaudible 24:23 33:9 74:25 include 111:15 112:17, 21 including 39:12 112:7 income 73:2 increase 33:5 increased 84:3 incumbent 78:4 incumbents 96:6 96:13 97:13, 21 98:7 individual 108:16 112:1, 15 individuals 82:6 information 12:8 15:3 34:25 40:4 53:12 56:18 81:15 83:17 86:16 93:4 initially 53:23 95:3 injustice 43:23 input 55:17 102:17 inside 66:4 insist 82:11, 23 instruct 29:4 112:16 instructed 12:21 13:5 instruction 29:20 instructions 89:8 10:19 70:20 interest 70:11, 2, 7, 11, 13, 14, 17, 18, 20, 22, 23 72:1, 2, 5, 7, 8 73:6	24 49:23 50:9 103:22 111:7 114:4 jim.davis@alabamaa g.gov 5:7 jim.mcclelland@false name.gov 15:14 jim.mcc@windstream. net 15:13 job 41:25 55:4 66:11 68:20 81:16 89:22, 23, 24 jobs 66:10 JOHN 1:10 5:1 7:13, 21 joint 38:17 40:15 Jones 14:22 judice 10:20 judicial 45:7, 12 JULIE 4:1 8:17 July 99:17 18, 22 jump 81:17 June 58:20 59:9, 11 60:8 99:19 justice 45:2 47:25 48:3 50:11 109:10, 13 < K > KAITLIN 4:8 Katherine 9:2 KATHRYN 3:11 7:25 9:11 15:2 21:5 23:4 35:7 36:11 49:4 65:16 100:13 113:16 keep 13:14 30:2 42:21, 24 43:1, 5 70:25 71:2, 3 kids 16:21 kin 115:10 JIM 5:2 7:12, 20, 24 18:19, 76:21
---	---	--	--

Page: 9

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

42:2, 10, 12, 16 45:7 46:15 48:18 53:7, 11, 14, 25 54:13, 49:9, 23, 25 56:7, 11 66:2, 20 67:4, 18 68:6, 12, 16, 22, 24 69:1, 2, 8, 13 73:20 75:11 76:6, 7, 9 82:6 84:20 87:25 88:5, 20 89:21 92:4, 5 93:3 95:16 96:5, 20, 23 97:3, 12, 19 102:3 map-drawing 9:25 41:2 66:6 mean 13:24 24:7 25:13, 18 27:9, 11, 14 map-making 64:19 maps 28:13 32:16 34:10 40:9 74:5 75:25 76:2 88:16 89:16 93:9 102:10 mark 19:14 35:5 36:1 46:24 61:5 63:18 76:21 94:4 100:4, 10 marked 35:23 36:25 47:10 61:13 64:4 76:16, 24 94:14 100:23 101:4 marks 7:11 50:4 Maroney 1:21 7:1 115:22 married 16:16, 18 materials 13:18, 20 89:15 mater 7:13 98:4 109:15, 16 McCLENDON 1:10, 20 5:9, 10 7:7, 12, 24	8:21 9:10, 25 19:20 35:5, 25 36:2 37:3 46:24 47:13 49:9, 23, 25 50:10 51:18 58:1 61:5, 9 63:18 64:7 65:19, 22 70:17 79:23 80:6 82:19 84:10 90:10, 12 94:4, 18 95:5, 8, 23 98:19 100:4, 10 101:11 104:2 114:4 M-c-C-L-E-N-D-O-N 9:25 22:10 27:21 30:1 32:1, 6 33:2 34:21 40:10 42:12 57:2 58:24 60:6, 13 69:5, 7 76:3 79:1 91:22 96:6 101:25 102:6, 8 105:12, 13 106:1, 4, 6 107:4, 6, 15, 16 108:6, 22 109:2, 7, 9, 19, 21 110:11, 13, 15 111:9 112:2 media 15:15 medication 11:1 meet 18:23 28:12, 23, 24, 25 30:19 56:22 88:21, 25 meeting 21:13, 15 22:19 28:17 30:20 35:3 57:18, 23, 25 63:12 70:12 74:12, 20 75:5, 13, 21, 23 76:13 77:8, 11 78:19, 21 83:15, 23 85:14, 15 86:20 90:18	92:4, 20 99:5 101:25 meetings 6:24 29:2, 3, 6, 18 30:8, 23 33:20 34:2, 5 55:15 56:2 62:10, 21, 22, 24 63:2, 3 4, 6 74:15, 25 75:9, 27 93:8 101:21 107:19 meets 28:12 member 26:5, 7 104:21, 24 105:2, 4 107:22 111:23 112:12 members 20:13 9:25 mean 13:24 24:7 25:13, 18 27:9, 11, 14 29:16 38:24 67:22 76:7 78:17 81:16 87:1 97:7 106:15, 18 Meaning 8:25 11:14 means 39:4 106:16 meant 22:12 30:22 44:6 87:2 111:19 media 15:15 medication 11:1 meet 18:23 28:12, 23, 24, 25 30:19 56:22 88:21, 25 meeting 21:13, 15 22:19 28:17 30:20 35:3 57:18, 23, 25 63:12 70:12 74:12, 20 75:5, 13, 21, 23 76:13 77:8, 11 78:19, 21 83:15, 23 85:14, 15 86:20 90:18	MILLIGAN 1:6 3:3 7:13 8:1, 12, 13, 18 9:13, 18 113:11 million 84:5 mind 23:8 25:15 29:7 49:6, 8 77:3 79:22 84:11 90:3 106:23 110:8 Ministries 8:3 minority 39:14 46:15, 15 47:19, 23 48:4, 7 50:24 51:7 52:4, 15 65:10 78:4, 8, 11 87:3, 10 88:10 93:23 96:3 97:4, 6, 9 minus 64:16 minute 78:20 94:17, 20 minutes 49:1 missed 78:20 mobile 14:25 15:23 moment 103:24 Monday 113:21 money 83:20 Montgomery 1:23 4:12 5:6, 15 60:18 62:2 72:2, 3 99:5 Montgomeryadvertis er.com 6:14 monuments 105:15 106:8 motion 95:19 move 8:6 48:7 52:23 68:6 74:25 moved 67:19 95:23 multiple 73:8 74:7 < N > N.W. 3:21 NAACP 3:13, 20 8:3 9:11
---	---	---	--

Page: 11

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

knew 33:4 89:21 know 12:6, 9, 14 14:9, 16 17:19 18:5 19:24 27:17 29:12 30:1 31:10, 20 33:22 37:13, 15, 17 40:20 42:1, 4 43:3, 4, 7, 19 44:15, 17, 18, 21, 22 45:19 46:21 48:17 57:20, 21 58:3, 19 59:3 60:16, 22, 24 61:2 63:4, 11 69:10, 22, 24 72:14, 21, 24 74:6, 8, 9 77:3 78:3 79:17 82:2 83:1, 3, 5, 8 88:12 90:1 91:12, 14 92:8, 10, 12, 13 96:5 98:16 100:14 105:16 107:19 110:2 111:23 112:12 113:18 knowledge 12:14 46:6 59:20, 24 67:10 68:23 86:9 88:15 103:5, 10 113:3 known 41:24 79:11 ksadasivan@naacpld f.org 3:16 kwelborn@aclualaba ma.org 4:13 < L > landed 101:10 language 14:7 Large 1:22 7:3 62:19 largely 13:2 larger 28:2 Laura 59:5 80:3	law 1:22 3:5, 12, 19 4:2, 9, 17, 18 5:12 24:12 25:24 29:9 30:1, 4 31:5 35:15 59:16, 18 66:18 97:18, 20 98:3 103:4 laws 2:5 39:11 lawsuit 17:22 23:4, 7, 8, 11 lead 47:22 leadership 28:11 leading 2:11 LeAnn 1:21 7:1 115:22 led 48:19 left 61:21 Legal 3:13, 20 9:11 67:6 82:13 103:8 legislation 108:3, 7 111:13, 19, 20 112:5, 7 legislative 9:20 23:23 26:18 27:9 36:13 38:11, 15, 17 40:5, 7 45:22 56:15 60:13 61:6 63:8 75:2 92:17 94:24 Legislators 39:24 40:12 56:22 legislature 17:23 26:20 33:6 34:17 38:7 40:10, 15 46:16 76:1 97:20 104:19 105:11 107:4, 20, 25 108:6, 20 109:7, 19 110:15 legislature's 38:17 lest 40:20	Letetia 8:2 letter 58:22 letting 77:3 level 73:2 liaison 62:12 103:14 Liberties 4:13, 10 license 16:13 licensed 115:14 Likewise 11:24 line 67:19 68:7, 17, 19 71:9 lines 32:18, 19, 20, 23 66:3 73:25 list 52:21 listen 54:16 listening 73:14, 16 litigation 10:9 20:3 111:16, 18 little 14:16 27:17 52:9, 10 53:17 84:4 98:11 living 17:2 LLP 3:6 loaned 55:20 local 103:15 location 60:1 102:3 locations 55:22 58:11, 18 102:1 103:16 log 113:17 logical 84:19 long 16:18 25:25 26:19 77:2 86:1 104:18 105:13, 5, 7 longer 78:7, 11 look 13:24 14:2 22:14 23:2 29:9 35:1 47:5 49:2, 10 61:18, 25 64:8, 14, 15 67:20 74:2 79:18 84:13, 102:3	15 87:2 94:17, 20 95:8 100:17 101:3, 13 looked 19:5 22:15, 23 41:12, 13 58:13 looking 36:22 52:20 64:14 101:11, 18, 23 looks 19:24 37:4 47:2 61:17 64:9 77:4, 5 100:19 Los 3:8 losers 98:8 lost 48:21 lot 53:19 71:17 86:16 102:23 109:25 113:16, 21 needed 22:9 33:4 55:4 56:13 80:9 81:15 82:9 83:18 86:24 90:15 91:3, 7 neighborhoods 70:20 neither 65:9 115:9 never 74:10 83:7 86:10, 12 104:4 New 3:15 4:5 74:10 news 47:16 nodding 11:21 normally 77:19 North 115:23 NORTHERN 1:2 7:16 Notary 1:21 7:2 notes 19:6 notice 9:17 95:12 November 6:22 94:6 95:10 Number 7:14 14:23, 25 15:8 22:15 33:23, 24 39:19
--	--	---	--

Page: 10

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

name 9:10, 24 10:1 72:16, 17 92:16 115:16 names 7:19 nature 25:20, 22 nay 97:1, 2 NE 4:19 necessarily 68:12 73:7 necessary 2:9 38:10 need 9:1 14:8 28:15 31:2 43:18 49:5 56:20, 21 67:20 81:6, 22 82:18 84:16 89:19, 20 102:23 109:25 113:16, 21 needed 22:9 33:4 55:4 56:13 80:9 81:15 82:9 83:18 86:24 90:15 91:3, 7 neighborhoods 70:20 neither 65:9 115:9 never 74:10 83:7 86:10, 12 104:4 New 3:15 4:5 74:10 news 47:16 nodding 11:21 normally 77:19 North 115:23 NORTHERN 1:2 7:16 Notary 1:21 7:2 notes 19:6 notice 9:17 95:12 November 6:22 94:6 95:10 Number 7:14 14:23, 25 15:8 22:15 33:23, 24 39:19	40:14 47:1 75:23 85:20 86:7, 10, 13 87:15 98:22 101:5 102:13 115:16 numbers 15:5 33:4 54:18 87:17 numeral 39:8, 25 < O > oath 10:17 object 12:18, 25 24:9 90:22 Objection 40:22 50:19 105:24 106:12, 14, 19 objections 2:9, 12 9:1 12:19 13:2 objectively 102:16 objectives 70:12 obtaining 45:2 occur 33:17 68:21 occurred 98:14 99:1, 12 October 6:20 75:20, 23 76:12 77:8 78:19 83:23 85:15 86:19 90:17 92:3 offered 2:14 76:9 95:20 Office 5:4 7:21 15:6 20:19 24:17 26:3 40:8, 11, 18 101:21 offices 1:22 official 9:19 105:6 officials 70:15 Oh 13:24 35:13 47:6 63:3 71:15 78:25 94:9 104:4	Okay 8:9 13:6 19:23 25:25 27:12 29:21, 23 35:10 36:18 38:25 45:9 47:6 51:10 52:6 58:3 61:23 64:1 77:7 78:25 85:24 88:3, 8 93:18 94:9 95:22 96:1 98:24 100:20, 25 101:6 103:24 105:10 106:22 108:14 109:11 old 16:25 once 33:3 54:25 66:13, 22 82:12 88:6, 7 109:25 ones 113:22 opinion 67:7 81:14, 22 82:14 108:24 opinions 82:20 opportunity 44:10 46:14 50:24 93:12, 16 96:22 97:9 102:17 optometrist 16:14 17:11 Optometry 16:7, 13 17:9 oral 7:8 order 21:21 25:24 55:3, 4 59:13 ordered 83:18 organizations 110:2 original 62:9 OSHER 4:16 6:3 8:15 103:21 104:1 106:22 110:21 113:14 outside 45:24 75:10 81:16	overlapped 99:10 overseeing 66:5 < P > p.m. 1:24 7:17 9:5, 8 51:14, 17 90:6, 9 99:2 114:5, 7 P.O. 4:11 PAGE 6:8 37:24 39:7, 22 40:2 47:21 49:22 79:22 80:1 84:12, 14 86:19 95:4, 18, 20, 24, 25 100:18 101:1, 3, 6, 7, 8, 9, 10 102:12, 13 paid 17:20 Paige 5:17 paired 97:14, 22 paper 66:4 paragraph 37:25 38:22 39:23 47:21 50:9 84:14 paragraphs 39:9 49:25 50:7 70:22 Pardon 20:11 68:14 89:3 part 28:10 37:6 50:14 52:20 55:1 67:16 71:13, 16 91:19 99:21 participate 102:4 particular 22:18 65:24 67:19 68:17 70:12 particularly 71:2 parties 1:18 2:11 102:3 110:15 115:10 parts 72:6 party 23:11 25:2, 4 104:22 105:2, 5, 12, 13
--	--	---	--

Page: 12

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

106:2, 5, 6 107:5, 6, 16, 19, 22 108:1, 2, 10, 11, 21, 23 109:8, 9, 20, 21, 25 110:1, 4, 12, 13 pay 23:5 PDF 101:7 pending 14:10 108:3, 6 people 110:2 percent 37:19 64:16 79:5 80:9 84:3, 23 85:10, 20 86:7, 11, 12, 25 87:9, 15 90:17, 21 91:1 96:17 percentage 84:21 percentages 86:14 perception 73:1 period 27:23 28:3 30:15 permanent 9:20 27:9, 14, 20 38:17 permit 39:16 permitting 46:4 person 28:13, 25 29:19 30:20 41:9 42:2 58:1 69:4 78:4 88:7, 8 personable 82:20 personal 12:14 15:3, 12, 15 personally 57:13 personnel 55:20 phone 8:7 13:14 14:25 15:5, 6 phrase 29:8 pick 102:8 picking 98:8 picks 86:13 pit 98:6 placed 96:6 pitt 8:6 70:14 77:17 93:4	Plaintiffs 1:8 3:3 4:15 8:1, 12, 14, 16, 18 9:13 103:20 111:2 113:11, 15 Plaintiff's 6:9, 11, 13, 15, 17, 19, 21, 23 35:22 36:24 47:9 61:12 64:3 76:15 94:13 100:22 plan 40:3 45:3 46:4 47:18, 22 48:1, 2 49:24 50:10, 25 51:7 52:2, 13 58:10 65:8, 17 91:15 95:1 96:4, 10 111:25 112:14, 18, 21 planning 57:6 plans 39:19, 23 40:17 42:6 45:16 93:13 play 35:17 58:5 please 7:18 9:23 10:1 12:1, 6, 9, 12 13:14, 17 14:2, 9 37:24 38:2 39:7 45:10 47:4 80:16, 23 81:4 84:11 85:6 91:5 94:18 100:4 plus 64:15 point 12:7 24:4 32:14, 15, 17 42:15 54:4, 6, 8, 9 56:25 86:18 107:14 points 6:10 19:6, 23 20:7 21:7, 8 22:3, 7, 8, 9, 13 23:1 35:8 93:7	polarization 69:20 77:12, 14, 24 80:14, 15 81:25 84:25 85:11, 23 90:20, 24 polarized 78:17 79:9, 14 80:4 82:10, 24 policies 25:19 64:21, 24 65:2 policy 25:21 26:24 39:16 65:24 70:16, 24 political 25:2 70:20 71:2, 6, 12 polls 44:11 population 33:3, 5 38:12 40:9 43:6, 13, 17 47:24 48:4 80:8, 10 84:1 86:23 87:9, 21 90:14 96:16 portion 77:11 possible 10:20 70:25 71:5 potential 69:18, 24 84:24 85:22 power 82:4, 23 practicable 70:21 precedent 97:24 preclearance 39:20 44:25 45:3, 7, 12 preference 108:16 premed-type 16:10 preparation 18:17, 22 93:7 preparations 28:11 preparatory 14:7 prepare 18:12 22:14 57:12 92:22, 25 prepared 56:14 preparing 58:17	PRESENT 5:19 7:18 18:21 93:5 presentation 40:5 pretty 16:10 28:19 36:16 53:6 72:10 87:13 previously- approved 48:5 primary 25:3 42:24 43:5 principles 52:3 Pringle 18:20, 23 22:23 55:9, 13 57:4 104:8 prior 2:14 20:24 21:1, 11, 12 22:18 26:11 54:10 63:13 64:19 74:16 91:17 92:2 privilege 90:23 113:17 probable 83:13 probably 29:24 46:22 57:8 61:23, 24 63:8 66:25 67:1, 15 73:3, 4 85:18 86:16 89:6 101:16 problem 44:1, 2, 5 49:12 67:20, 21, 22 68:7 97:3 problems 43:23 Procedure 7:5 proceedings 7:9 115:5, 8 process 22:16 27:25 28:6, 12 33:7 34:9 37:12 39:20 40:5 41:2 45:12 52:24 53:17 57:7, 12 64:19, 23 65:3 66:3, 6 67:17
--	---	--	--

Page: 13

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

19, 20 21:17, 25 22:17 23:11, 14 27:5, 7, 8, 12, 19, 20, 23 28:6, 9, 17 29:16 30:13 33:7 38:16 39:19 40:3, 9, 16 42:5 45:12, 16, 21, 23 46:13 48:1, 2 52:14, 23 56:16 57:7, 12, 19, 22 58:2, 6, 24 59:19 60:7 63:15, 25 64:18, 21 65:3, 8, 20 70:18 75:3 84:6 88:19, 22 91:18, 24 92:5, 18, 20 94:23 98:7, 12 111:15, 24 112:7, 14 reduce 48:7 reducing 48:4 reelection 87:7 refer 13:17, 20 113:22 referred 38:18 referring 19:21 84:16 86:24 reflection 50:18 reform 109:10, 14 refresh 48:13 regarding 69:18 regular 63:9 75:13 related 87:8 108:2 relating 2:5 relationship 84:23 85:1, 9, 11, 20 rely 82:20 112:3, 13 42:19 remedy 43:25 remember 19:10 21:4 23:5 24:12 33:18,	19, 23 34:7 46:1, 2, 19 48:16 51:20, 23 52:1 58:20 76:8 77:10 79:15, 21 83:25 88:24 89:1 92:21 107:11 remotely 13:13 removal 106:7 removing 105:14 Rep 49:23 50:9 repeat 91:5 rephrase 12:6 Reporter 7:1 8:24 11:13, 19, 20 19:14 20:4 32:12 35:5 36:1 43:14 44:7, 13 46:24 52:8 61:4 63:17 113:24 115:15 Reporting 115:14 represent 7:19 9:12 20:2 47:15 76:11 77:7 95:11 representation 85:14 Representative 18:20 48:18 55:9, 12 58:15 59:5 60:4 69:3 78:8, 11 79:3, 8 80:3, 12, 25 83:11, 12 84:14 86:3, 6, 21 87:12, 20, 24 88:2, 6 99:24 101:19, 24 102:14, 18 103:6 104:8 representatives 20:22 24:24 26:6 56:1 112:3, 13 represented 18:8 representing 88:10 111:7	republican 25:4, 5, 6, 8, 9, 12, 13 104:22, 23, 25 105:2, 4, 13 106:6 107:6, 16 108:5, 11, 23 109:9, 21 110:13 requests 110:3 request 6:24 40:11 59:14 85:8 99:25 101:20 113:19 requested 58:15 91:4, 8 99:24 requesting 58:25 requests 113:23 require 39:15 73:12 77:23 102:1, 3 required 12:20 13:4 16:13 38:7 66:19 67:3 68:1 91:10, 13 requirement 67:10 requirements 67:13 requires 70:24 73:21 102:7 residents 109:23 110:18 respect 29:17 54:19, 24 68:21 70:19 86:3 90:16 97:12 respective 1:18 respond 13:4 102:18 response 80:12, 16 81:4 85:3, 6, 12 96:11 responsibilities 28:8, 18 30:17 53:4, 13 54:12, 18, 22 56:16, 11 69:16 responsibility 29:17 82:8	responsible 69:8, 12 responsive 12:8 result 115:11 results 84:24 85:23 retired 17:9 retreat 47:23 retreats 48:2 retrogression 39:13 47:23 48:19 50:4 51:24 review 19:1 22:6, 18 28:14 38:8 58:11 93:9 reviewed 19:5, 17 22:1 revisions 40:16 rich 72:12 right 51:21 70:9 71:8 74:8 80:2, 19 101:24 106:21 107:16 Rights 39:8, 18, 21 43:20 47:25 50:11 65:7, 11, 14 66:9, 12, 20 67:5, 7, 11, 14, 22 68:1, 3, 8, 18 69:14, 14, 18, 24 77:20 82:7 91:16 97:21 rise 77:22 risk 87:4 Road 14:22 role 10:8 28:5 29:2, 25 30:8, 9, 22, 23 31:16 34:8, 12 35:18 45:6, 11 53:1 56:4, 9 58:5 66:5 88:18 roll 34:20 Roman 39:25 room 13:13 104:8 ROSS 3:18 8:13
---	--	--	---

Page: 15

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

70:7 88:19 89:15 91:19 produce 74:3 84:20 produced 20:2 39:23 47:16 67:9, 13 100:16 production 113:19 programs 108:18 projected 56:19 proposals 40:13 proposed 40:3 45:3, 15 68:19 96:23 97:19 102:2, 7 proposing 45:6, 11 protections 39:12 proved 42:13 57:15 provide 11:3, 7 40:11 89:8, 14 provided 20:7 38:9 provides 43:24 48:15 providing 102:17 Public 1:21 6:16 7:2 24:16 17 33:6, 13 40:4 55:14, 17, 21, 23 56:7, 21 58:6, 12, 18 59:8, 15, 18, 23 60:1, 9, 14, 18, 19 61:6 62:1, 6 98:11, 21, 25 99:6, 7, 9, 10, 12, 13, 16 102:7, 9, 17, 19 103:3, 7, 9, 12 105:15 106:8 pull 36:19 63:18 pulled 94:16 purpose 22:7 48:7 65:9 purposes 10:18 70:12	pursuant 7:4 37:25 38:5 put 34:14 35:2 47:18 52:21 58:13 63:10 96:6, 13 putting 66:3 < Q > question 9:2 12:2, 5, 8, 18, 20 13:1, 4 14:10, 11 26:16 34:7, 24 37:20 40:23 43:8, 15 44:4 45:20 49:9, 20 51:4 54:7, 15 58:4 64:25 69:10, 11 72:22, 25 83:2 86:1, 3 92:11 95:3 97:25 98:24 105:22 106:1, 11, 24 107:13 109:11, 14 110:7, 8 questioning 10:18 questions 2:10, 11 11:2, 3, 6, 7 14:16 49:3 85:25 103:19 20, 21 104:6, 14, 17 111:1 quick 67:18 quickly 40:19 46:25 51:19 67:1 73:15 77:1 quite 18:1 34:23 44:3 53:15 77:1 quotation 50:3 quote 48:22 49:17, 19, 20 50:2 7 68:3 90:13 quoted 47:20 50:1 quotes 50:14	< R > race 43:9 44:10 108:17 113:1 races 79:21 racial 39:14 42:25 43:2, 3, 22, 23 44:1, 2, 5 69:19 73:12, 21, 23, 24 74:1 77:11, 13, 17, 23 78:2, 10 81:25 84:25 85:10, 23 90:19, 24 racially 78:17 79:12, 14 80:3, 14 82:10 ran 25:6 Randy 88:17, 18 112:16 RC 100:11, 15 101:5 102:13 reach 53:25 read 17:24 18:2, 3, 4 19:12, 22 37:24 38:2, 22 39:7, 8, 22 41:3 44:7 48:23 50:15 80:5, 11, 16, 24 81:4 85:3, 6, 7 86:4 reading 2:2 ready 49:15 56:25 58:14 real 107:12 really 19:22 23:4, 5 45:8 48:21 51:19 69:5 77:6 108:24 reapportionment 6:12, 18 9:21 27:10, 13, 15 30:7, 18, 21 31:14, 18, 23 32:6, 10 33:21 34:8, 12 36:14 37:10, 16	38:18, 19 39:5 40:6, 8, 11, 18 42:6, 9 53:2 54:20, 23 55:15, 16 56:5, 10 57:3 60:10, 14 61:6 62:25 63:25 64:18 65:4, 22 74:13, 20 75:6, 10, 21 76:13, 13 77:9 82:5, 24 85:15 86:20 90:18 91:25 98:10 reason 10:23 49:16 50:1, 8, 12 74:19 108:25 recall 12:7 37:11 42:8 45:18 48:24, 25 50:15, 21, 23 51:6, 9 62:15 96:5 received 54:14, 25 58:23 59:12 95:12 101:16 receiving 54:10 57:16 Recess 9:6 51:15 90:7 recognizable 42:22 recognize 36:8 37:2, 5, 8, 9, 10 47:12 64:13 94:7 101:9, 10 record 8:8 9:5, 8, 24 11:20, 21 12:10, 19 13:3 51:14, 17 90:6, 9 113:24, 25 Rector 3:14 red 78:9 redacted 15:3 redistrict 38:10 redistricting 10:7, 10 17:22 20:14, 15, 17,
---	---	---	---

Page: 14

Evan Milligan, et al v. John H. Merrill, et al.

Jim McClendon
12/17/2021

Roughly 10:6 42:19 78:13 RPV 78:16, 17, 18 81:9, 12, 19 83:10, 23 84:17 85:22 86:24 90:16 92:8 R-Springville 49:24 Rule 40:14 59:22 rules 2:5 7:5 21:21 40:15 41:10 rulings 66:18 run 25:1, 8, 9 104:23 < S > SADASIVAN 3:11 6:2 7:25 8:1 9:3, 9, 11 31:9 35:9, 13 36:12, 18, 21 49:8, 13 51:3, 11 52:10 61:1 63:16, 22 65:18 76:20, 25 90:3 93:17 94:11 100:7, 36:19 38:1 113:10 safe 87:13 satisfied 42:14 saw 62:14 saying 47:21, 22 48:24 51:23 56:20 80:13 107:23 says 30:4 41:4 61:6 70:19 80:5 86:10, 14 100:11, 15 101:24 102:5, 14 113:22 scan 40:19 77:1, 2 schedule 6:16 31:1 53:8 55:2 58:6, 10	60:23 62:12 98:20 102:7 scheduling 28:16 62:5 school 15:24 17:3 scrapped 59:13 screen 19:15, 19 46:25 61:3 63:19, 24 76:11 94:8 100:3 Scroll 19:23 95:2 100:13 scrolling 100:11 second 47:21 49:6 61:10 64:8 74:12 75:5 84:13 102:12 secret 29:12, 14 Secretary 7:21 35:11 47:16 111:7 Section 39:21 43:20, 22 44:8, 12, 14, 18, 23 45:1 65:6, 11, 14 66:20 70:16 see 19:22, 23 28:15 32:5 36:19 38:1 39:3 50:6, 24 61:2 62:1, 3 63:20, 24 74:1, 9, 16 76:18 77:10, 19 80:2 83:6 89:6 94:8 95:9, 25 103:16 110:1 seeing 51:6 55:2 95:4 seen 64:6, 10 101:14, 15 select 75:22, 24 76:6 103:8 selected 31:6, 22 32:2 selection 31:12, 16 senate 15:13 19:8 20:9	22:2 24:5, 10 26:7, 9, 21 27:21 29:10 32:9 45:19 53:3, 5, 13 54:20, 23 56:5, 9 65:3, 20, 22 82:4, 23 93:3, 6, 21, 24 94:1, 2, 6, 22 95:10, 11, 14 111:10, 24 Senator 7:24 17:13, 14, 15 19:20 35:25 37:2 47:12 49:9, 25 51:18 58:1 61:8 64:7 65:19, 21 80:5 82:19 90:10 94:17 95:5, 7, 16, 20, 23 96:3, 10, 20, 23 97:12 103:24 104:2 106:23 110:23 111:5, 9 113:6, 11 senators 20:21 111:21 sense 21:14 28:1 82:18 sent 101:21 sentence 39:1 85:7 September 55:25 56:3 sequence 53:22 serve 25:25 31:22 32:7 served 9:17 26:2, 19 27:2, 3, 5 service 24:16 serving 104:18 105:10 107:25 session 45:22 56:15, 16 57:1 63:8, 9, 14 74:17 75:2 92:2, 17, 23 93:1 94:24	set 47:24 53:8 55:22 56:24 59:10, 16 setting 55:2 58:5 59:22 Sewell 86:15 87:20, 24 88:3, 6 Shalela 8:1 share 19:18 46:25 61:3 63:19 76:11 100:3 shared 22:9 49:22 53:20 54:17 sheet 113:18, 22 show 19:15 46:23 48:6 53:21 showing 61:16 100:9 side 70:4 signature 2:2 significant 102:4 109:22 110:17 similar 19:24 61:18 simply 70:6 108:25 single 29:24 70:6 Singleton 95:6, 16 103:19, 22 111:2 Singleton's 96:23 sir 25:11 35:9 61:22 76:25 78:24 94:11 98:1, 23 100:2 103:24 17:25 90:11 113:12 situation 98:5 six 99:20, 23 slow 52:8, 12 73:13 smaller 28:2 Sniderman 80:1 social 15:15
---	---	---	---

Page: 16

Evan Milligan,et al v. John H.Merrill, et al.

Jim McClendon
12/17/2021

socially 25:16, 17 socioeconomic 73:2 software 74:3, 4, 5, 6 87:18 soil 72:12, 19 solutions 43:24 somebody 86:13 sooner 20:25 Sorry 14:6 22:12 23:9, 19, 20 24:1, 2 26:13, 14, 17 34:3 35:8, 14 36:3 39:22 43:14 44:13 51:3 62:23 63:22 73:15 80:23 85:4 106:21 sort 8:7 18:15 19:25 56:19 59:2, 12 86:7 SOS 47:1 sound 48:10 Southern 16:3, 9 southerner 67:1 spaces 105:15 106:8 speak 11:25 109:3 speaker 31:24 speaking 73:15 special 56:16 57:1 63:13 74:17 75:2 92:2, 17, 23 93:1 94:24 speculate 43:18 speculation 53:20 spell 9:24 spent 53:17, 19 spilled 56:2 spread 35:19 62:11 spring 88:23 89:9 Springville 14:22 15:25	staff 20:13 40:11 55:16, 17 58:9, 23 60:3 62:8 88:8 101:21 103:13 staffed 20:20 standing 21:13, 15, 20, 22 22:1, 10, 19 93:5 Stars 3:7 start 57:6 61:20 94:25 106:3 started 45:18 46:2 53:16 54:5 57:8 62:9 66:3 70:14 starting 32:14, 15, 17 42:15 State 1:22 7:3, 19, 21 9:24 12:13 15:7 20:15, 20 38:6, 7, 11, 15 39:11 47:16 48:6 60:20 61:20 62:11 64:12 72:11 96:16, 17 98:3 99:5 109:23 113:18, 19 115:1 stated 51:19 103:2 statement 44:7 50:16, 22 105:18, 21 109:17 113:18 statements 11:20 STATES 1:1 7:15 38:6 39:11 65:6, 12 state's 48:1 stay 30:10 31:4 41:4 66:4 staying 41:14 Ste 3:7, 21 4:19 5:14 step 49:5	steps 57:11 88:13 STIPULATED 1:17 2:1, 8 stipulation 7:6 8:24 stipulations 8:24 stop 29:21 Street 1:23 3:14, 21 4:4, 19 5:14 115:23 strength 39:14 65:10 strike 56:8 studied 16:11 study 19:12 80:4, 15 81:3, 7 82:10, 25 84:25 85:8, 11 subdivisions 70:20 subgroup 44:10 subject 39:20 submit 34:16 91:23 submitted 34:13 submitting 91:18 subsequent 65:25 67:8 subsequently 30:5 subset 75:14, 16, 17 substitute 76:8 95:20 suddenly 98:7 sufficient 81:6 suggest 87:5 suggested 79:20 88:3 suggestions 60:7, 8 Suite 115:23 summarized 22:20 summarizes 28:19, 21 summary 22:8 23:3, 7, 8 supercedes 98:3 support 25:1 supports 108:11, 12	sure 12:13, 23 15:7 28:20 30:10 31:4 37:23 41:5, 7, 9, 15 42:18 44:9 45:25 54:15 60:25 79:5 84:8 91:20 93:21 107:10 109:5 112:17 114:2 surprise 104:4 surprised 60:24 74:23 suspect 80:18 suspicious 77:17, 22 78:10 swear 8:19 76:5 sworn 8:22 10:17 system 17:7 36:16 40:8 55:19 58:8 60:4 62:20 74:10 103:15 < T > tacked 77:18 99:20 take 16:8 19:11 34:13 35:11 41:5, 7 49:11 51:11 79:18 88:13 90:4 94:17, 20 109:25 taken 1:21 9:6 51:15 90:7 104:12 115:5, 8 takes 97:24 Talk 6:10 24:15 41:16, 23 67:1 87:20, 24 talked 18:15 33:1 41:19 42:1 53:23 58:7 67:15 83:24
---	---	---	--

Page: 17

Evan Milligan,et al v. John H.Merrill, et al.

Jim McClendon
12/17/2021

undergraduate 16:2 underneath 113:20 underpopulated 84:7 understand 9:16 10:18 11:2, 6, 9, 13, 22 12:3, 5, 10, 22 13:3, 7, 16 14:4, 12 18:1 23:19 34:23 44:4 54:15 78:21 81:24 82:19 107:23 understanding 45:9 67:25 70:23 77:13 8 114:3 view 105:11 108:10 viewed 102:16 views 105:11 106:2, 4, 5 107:4 108:20, 22 109:7, 12, 13, 19, 20 110:11, 12, 16 violate 68:17 91:16 92:5 violation 69:24 violations 69:18 virtually 69:4 88:7 vote 22:11 34:20, 22, 25 39:6 76:3, 7 81:5 87:12 93:12, 16 95:15, 24 96:22, 25 97:2 111:12 voted 52:5, 16 96:2, 9, 19 97:13 111:24 112:13 voters 48:8 78:6 87:10, 12 97:10 98:9 votes 95:24 111:21 112:5, 9 73:23, 24 81:2	Usual 8:24 < V > value 83:16 VAP 80:21 81:5 various 94:23 venues 60:17 verbal 11:19 versus 7:13 9:13, 19 VIDEO 1:9 95:12 videoconference 11:11 Videoographer 5:20 7:11 8:9, 19 9:4, 7 51:13, 16 90:5, 8 114:3 view 105:11 108:10 viewed 102:16 views 105:11 106:2, 4, 5 107:4 108:20, 22 109:7, 12, 13, 19, 20 110:11, 12, 16 violate 68:17 91:16 92:5 violation 69:24 violations 69:18 virtually 69:4 88:7 vote 22:11 34:20, 22, 25 39:6 76:3, 7 81:5 87:12 93:12, 16 95:15, 24 96:22, 25 97:2 111:12 voted 52:5, 16 96:2, 9, 19 97:13 111:24 112:13 voters 48:8 78:6 87:10, 12 97:10 98:9 votes 95:24 111:21 112:5, 9 73:23, 24 81:2	Voting 39:8, 14, 17, 21 43:13, 17, 20 47:25 50:11 65:7, 10, 11, 14 66:9, 12, 20 67:4, 7, 11, 14, 22 68:1, 2, 7, 17 69:9, 13, 18, 24 77:14, 20 78:18 79:9, 14 80:4, 7, 10, 17, 20, 21 82:7, 10, 25 86:22 87:9, 21 90:14 91:16 96:15 97:21 VRA 45:1 92:6 VS 1:9 < W > wait 11:25 12:1 78:20 waived 2:3 WALKER 5:11 7:23 8:25 12:17 13:24 15:2 18:11, 24 21:5 22:23 29:4, 20, 23 31:7 35:7, 10, 15, 19 36:3, 6, 20 40:22 47:3, 6 48:11 49:4, 12, 19 50:19 51:12 52:12 61:10, 15 63:2, 21 65:15 66:2 76:21, 23 81:18, 21 82:13 83:15, 22 90:19, 22 92:16 93:15, 18, 25 94:4, 9 100:3, 6, 10, 16, 20 101:1, 4 102:24 105:24 106:16, 20 110:25 113:8, 16 114:2 want 8:19 24:21 44:7, 16, 101:12 104:3,	21 51:18 102:22 103:22 wanted 22:11 55:24 87:4 88:9 93:4 Washington 3:22 4:20 5:5 waste 83:20 way 24:10 68:16, 19 71:16 83:5 84:19 100:14 105:4 ways 71:18 web 11:10 week 56:3 92:19 weeks 55:25 WELBORN 35:17 36:10 61:19 75:16 78:22 79:24 94:10 100:13, 17 113:25 welcome 103:23 110:24 113:7 well 10:1 15:6 17:15 19:16, 24 20:19, 24 21:9, 10, 25 22:6, 15 25:3 26:3, 21 27:5 28:10, 19 29:21 30:9 35:2, 19 39:4 41:3, 24 43:18 46:21 48:15 50:3, 14 52:18 53:15 55:1, 16 59:9 60:19 62:3, 7 64:14 65:25 66:15 67:6 68:2 70:1, 25 71:25 73:1, 22 76:11 77:5 78:25 80:17 82:8, 12 83:21 86:14 87:10 89:21 91:17 92:24 94:17 98:2, 16 101:12 104:3,
---	--	--	---

Page: 19

Evan Milligan,et al v. John H.Merrill, et al.

Jim McClendon
12/17/2021

talking 19:22 20:7 21:6, 7, 8, 16 22:3, 7, 8, 13 23:1 30:11, 12, 14 31:8 34:10 35:8 49:21 57:22, 24, 25 57:16 70:9, 17 107:15 Tallaposa 1:23 5:14 target 23:24 24:7 58:20 targeted 99:19 targeting 86:6 teacher 17:3 team 28:11 technical 40:12 telephone 14:23 tell 33:22 36:14, 7 61:18 90:19 96:2 ten 10:6 27:5 tenure 26:19 term 73:16 107:11 terms 26:2, 4 27:4 97:17 108:14 test 77:16, 18 testified 8:22 23:10 73:17 testify 10:19 23:18, 20 testimony 10:24 73:9 102:10 Texas 16:5 Thank 9:14 13:11 14:6, 14 26:17 35:13 38:4, 21 49:13 51:10, 12 52:17 63:22 76:25 90:10 98:23 104:5 107:1 110:21, 22 113:6, 11, 15 thereto 2:14 thing 31:3 33:10 54:5 57:13 73:4	78:3 96:12 107:14 things 25:23 27:14 28:20, 22 30:19 53:22 55:3, 4 62:13 96:12 think 21:10 25:4 28:19, 21 37:17, 21 46:17 50:17 52:8 55:24 58:20 59:11 60:3 62:14 63:3, 21 67:15 70:1 73:1 76:4 77:25 78:9 79:4, 5, 19, 24 80:21 81:20 82:17 83:10 84:4, 8 85:16 87:6 88:6 93:20, 22 97:3, 8, 15 98:17 102:21, 23 103:18 105:4, 16, 17, 19 106:9, 10 thinking 57:8 63:7, 13 third 56:3 63:5 70:16 thought 50:18 83:7, 16 85:4 threat 87:6 threatened 78:13 three 26:2, 4 27:4, 20, 21 97:24 threshold 85:21 86:8 Thursday 74:17 76:1 92:2, 19 time 2:12, 13 7:17 9:5, 8 10:7, 11 12:18, 24 13:1 14:9 17:16 27:23 28:3, 16 30:15 31:1, 7 32:21 37:23 41:23 45:9 50:18	51:14, 17 52:7 53:15, 17, 19 55:18 56:21, 22 57:9, 10 59:15 60:1 67:15 68:12 83:20 90:6, 9, 11 99:7, 13, 19 103:2 104:5, 22, 25 108:9 110:22 112:20 113:12 114:4 timeline 54:1, 21 56:24 57:14 timelines 56:12 timely 55:5 times 55:23 68:5, 9, 15 70:1 99:15 103:7, 8, 11 timing 53:21 102:14, 19 title 64:15 today 9:16 10:24 11:16 13:18, 21 17:19, 25 18:8, 13 19:18 22:14 73:14 75:11 104:5 109:24 110:19 today's 9:14 11:9 told 29:5, 6 55:24 88:5 90:24 91:2, 6, 9 topic 110:9, 10 topics 64:16 town 63:11 transcribed 115:5, 8 transcribing 11:14 Transcript 6:20, 22 76:12 77:8, 10 79:18 80:18, 24 86:19 94:5, 21 95:8, 12, 14, 15 115:7	transcription 115:6 travel 102:2, 4 trial 2:13 23:18, 20 tried 57:13 65:19 93:2 Trojan 62:16 trouble 8:4 Troy 62:15 true 12:14 115:7 trust 26:23 truthful 10:24 truthfully 10:19 try 19:13 41:4 53:8 64:24 66:24 110:7 trying 48:21 53:16, 25 Tuesday 74:16 75:1 92:1 turn 24:3 26:12 62:23 turned 101:1 turning 79:22 84:11 TURRILL 3:4 8:11 twice 99:18 Twitter 15:20, 21 two 15:10 19:4 34:2, 5 39:7, 9 46:4, 15 47:19 49:25 50:24 51:6 52:4, 14 57:9 63:3 74:14, 21 75:10, 23 85:1 93:9, 13, 22 96:3, 6, 13 97:8, 13 98:6 101:2 110:1 two-year 58:8 62:8, 10 < U > U.S 38:9 39:17 ultimately 93:6
---	---	--	---

Page: 18

Evan Milligan,et al v. John H.Merrill, et al.

Jim McClendon
12/17/2021

4, 23 105:3 106:18 107:18 well-kept 29:11 went 22:1 26:2, 3 67:17 84:4 we're 13:12, 13 30:11 35:15 36:22 52:6 70:9, 17 74:21 75:11 84:19 101:23 west 72:11 we've 45:23 47:6 49:4 79:17 win 78:11 winners 98:8 wish 23:9 40:12 witness 2:3 7:7 8:7 29:21 47:5 61:17 106:14 wondering 53:18, 19 71:13 word 25:14 34:3 50:4 78:14, 20, 23 words 50:5 99:9 work 9:11 17:8, 15 36:16 40:9 55:3 58:9 59:2 89:7 103:16 worked 58:9 69:5 83:6 108:1, 5 working 17:14 66:16 70:15 102:16 110:14 works 18:16 81:23 worth 28:22 worthwhile 83:16 writing 11:15 wrong 98:20 < Y > Yeah 26:10 33:13 39:3	49:20 62:15 78:13, 15 96:1 98:18 114:2 year 57:9 years 10:6 16:19 27:6, 18 57:9 59:2 104:20, 21 105:10 107:3, 11, 25 Yep 80:1 yesterday 18:14, 24 22:22 100:16 York 3:15 4:5 < Z > Zero 99:8, 11 Zoom 3:18 4:15 8:10	21 51:18 102:22 103:22 wanted 22:11 55:24 87:4 88:9 93:4 Washington 3:22 4:20 5:5 waste 83:20 way 24:10 68:16, 19 71:16 83:5 84:19 100:14 105:4 ways 71:18 web 11:10 week 56:3 92:19 weeks 55:25 WELBORN 35:17 36:10 61:19 75:16 78:22 79:24 94:10 100:13, 17 113:25 welcome 103:23 110:24 113:7 well 10:1 15:6 17:15 19:16, 24 20:19, 24 21:9, 10, 25 22:6, 15 25:3 26:3, 21 27:5 28:10, 19 29:21 30:9 35:2, 19 39:4 41:3, 24 43:18 46:21 48:15 50:3, 14 52:18 53:15 55:1, 16 59:9 60:19 62:3, 7 64:14 65:25 66:15 67:6 68:2 70:1, 25 71:25 73:1, 22 76:11 77:5 78:25 80:17 82:8, 12 83:21 86:14 87:10 89:21 91:17 92:24 94:17 98:2, 16 101:12 104:3,
---	--	---

Page: 20