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

BOBBY SINGLETON, et al.,	*	
Plaintiffs,	*	2:21-cv-1291-AMM
	*	August 15, 2023
vs.	*	Birmingham, Alabama
	*	9:00 a.m.
WES ALLEN, in his official	*	
capacity as Alabama Secretary	*	
of State, et al.,	*	
Defendants.	*	
*****		

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING  
BEFORE THE HONORABLE ANNA M. MANASCO,  
THE HONORABLE TERRY F. MOORER,  
THE HONORABLE STANLEY MARCUS

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PROCEEDINGS

(In open court.)

JUDGE MARCUS: Good morning, ladies and gentlemen.  
Welcome.

We will call the case of Singleton vs. Allen as our courtroom deputy did, and I would ask you if you would be kind enough to state your appearances on the record.

For the Singleton plaintiffs.

MR. QUILLEN: Henry Quillen for the Singleton plaintiffs, Your Honor.

JUDGE CLEMON: U. W. Clemon for the Singleton plaintiffs.

MR. BLACKSHER: Jim Blacksher for the Singleton plaintiffs.

MR. HARE: Eli Hare for the Singleton plaintiffs.

JUDGE MARCUS: And good morning to all of you folks.

MR. STILL: Edward Still for the Singleton plaintiffs.

JUDGE MARCUS: Thank you. And for the Secretary of State and the other defendants.

MR. LACOUR: Good morning, Your Honor. Edmund LaCour for defendant Secretary of State Wes Allen.

MR. DAVIS: Jim Davis for Secretary of State Allen.

MR. SMITH: Good morning, Your Honor. Brent Smith for Secretary of State Wes Allen.

MR. WALKER: Good morning, Your Honor. Dorman Walker

1 for the committee chairs.

2 JUDGE MARCUS: And good morning to all of you.

3 We set this case down for a preliminary injunction hearing  
4 to proceed on the Singleton claims.

5 As we understood it from our last status conference -- and  
6 you can help me with this from the Singleton plaintiffs. I  
7 take it you were planning to call two witnesses live, and the  
8 rest of your case you were going to submit pursuant to the  
9 documentary evidence you've submitted?

10 MR. QUILLEN: Since we submitted our witness list, we  
11 had decided that we will call one witness, Bobby Singleton.

12 JUDGE MARCUS: Okay. So Mr. Singleton will be the  
13 only live witness in the case.

14 Mr. LaCour, Mr. Davis, I had asked -- Mr. Walker, I had  
15 asked this question, as well. I take it at least from the last  
16 submission that you were going to proceed just with your  
17 documentary evidence. You were not planning to call anyone  
18 live.

19 MR. DAVIS: That is correct, Your Honor. We do not  
20 intend to call any live witnesses. We intend to rely on our  
21 briefs, argument. And there are a few exhibits we will bring  
22 to the Court's attention.

23 JUDGE MARCUS: Okay. So why don't we proceed this  
24 way: Why don't we begin with opening statement.

25 Mr. Quillen, I am not sure who would be giving the opening

1 for Singleton.

2 MR. QUILLEN: I will, Your Honor.

3 JUDGE MARCUS: And for the defendants?

4 MR. LACOUR: I will, Your Honor.

5 JUDGE MARCUS: All right. We will give each side a  
6 half hour max for opening statement, and then, Mr. Quillen, you  
7 will be able to proceed with your presentation.

8 Thank you.

9 MR. QUILLEN: Thank you.

10 Good morning, Your Honors.

11 JUDGE MOORER: Good morning.

12 MR. QUILLEN: Toward the end of yesterday's  
13 presentation, Mr. LaCour said that the Alabama Legislature got  
14 as close as it could to creating two opportunity districts  
15 without violating the Constitution and traditional  
16 redistricting principles.

17 And we believe that statement's wrong on a number of  
18 levels, but it is a helpful reminder about how intertwined the  
19 constitutional and statutory issues are in this case.

20 That statement is wrong first because it asserts that the  
21 Legislature was making a good faith effort to create two  
22 opportunity districts rather than as it seems setting up a new  
23 constitutional challenge to either the Voting Rights Act or how  
24 it's been interpreted under *Gingles*. But that is a Voting  
25 Rights Act issue that we won't address further because that's

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1 really for the Milligan and Caster plaintiffs.

2       The second way in which that statement was wrong is that  
3 their plan does violate the Constitution. It perpetuates a  
4 racial gerrymander that creates district lines that go into  
5 Jefferson County to encompass a predominantly black population  
6 as it's done since 1992.

7       The third way in which that statement is wrong is that  
8 they didn't get as close as they could to creating two  
9 opportunity districts without violating the Constitution and  
10 traditional redistricting principles, because when the  
11 Legislature passed SB-5, they had already considered and  
12 rejected a plan offered by Senator Singleton that drew  
13 completely race neutral districts, and two of those districts  
14 were opportunity districts. That plan also, as I will describe  
15 in more detail later, complied with what the state says are its  
16 traditional redistricting criteria or at least the ones that  
17 are legitimate under controlling Supreme Court precedent.

18       The background law here is that district lines that  
19 separate voters by race are unconstitutional unless they can  
20 survive strict scrutiny.

21       It's our understanding that the defendants are not going  
22 to claim today that their plan satisfies strict scrutiny. It  
23 really boils down to the question, did race predominate in the  
24 creation of District 7, and in particular, did race predominate  
25 in the finger that extends into Jefferson County for the

1 purpose of obtaining black voters for District 7. To prove  
2 that race predominated, plaintiffs do not have to show  
3 discriminatory animus, because a gerrymandering claim is  
4 different from an intentional discrimination claim.

5 I will make the same clarification we did in our original  
6 preliminary injunction hearing, which is that we have two  
7 counts in our complaint; one is a gerrymandering claim, one is  
8 an intentional discrimination claim, and we are only seeking  
9 the preliminary injunction on the gerrymandering claim.

10 The only intent we must prove on the Legislature's part is  
11 the intent to enact lines that separate voters by race. And to  
12 prove this, we are not required to offer any direct evidence of  
13 legislative purpose. It is the as the Supreme Court said in  
14 *Miller vs. Johnson* and several cases since, we can satisfy our  
15 burden entirely with circumstantial evidence of the district's  
16 shape and demographics.

17 There's actually a recent example of a plaintiff meeting  
18 that burden without direct evidence.

19 After the 2010 census, the North Carolina general assembly  
20 drew dozens of State House and Senate districts so that they  
21 would be majority black ostensibly to comply with the Voting  
22 Rights Act of 1965. Those districts were held to be an  
23 unlawful racial gerrymander, and the general assembly was  
24 ordered to submit proposed remedial maps. They did so, and it  
25 was undisputed that when they crafted the remedial maps, the

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1 map drawers were instructed not to consider race at all.

2 The plaintiffs in that case allege that four of the new  
3 districts still segregated voters on the basis of race. And  
4 the district court agreed -- this is *Covington vs. North*  
5 *Carolina* -- it held that these districts retained the cores of  
6 the previous districts and were therefore unconstitutional.  
7 And on appeal, the Supreme Court affirmed on this issue.

8 We cited the Supreme Court and district court opinions in  
9 *Covington* I believe seven times in our objection. The state's  
10 response did not mention them once, nor did it mention any  
11 voting rights' precedents that postdate *Covington*.

12 So let's talk about the shape of the district. Until the  
13 first administration of George Wallace, Jefferson County had  
14 been kept whole in every congressional map since the founding  
15 of the state of Alabama.

16 Suzanne, could you put up Exhibit 5, please?

17 This is the map that was enacted last month. The shape of  
18 District 7 is basically the same as it has been since 1992, at  
19 least for the part of the state that's relevant here.

20 A finger reaches up from the Black Belt to grab  
21 disproportionately black areas of Birmingham and its suburbs.

22 The 1992 version of the district, which was specifically  
23 created to ensure that the majority -- that the black  
24 population would be as close to 65 percent as possible has  
25 already been conceded to be a racial gerrymander by Secretary

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1 Merrill -- Secretary Allen's predecessor.

2 The reason he cited for that being a gerrymander was the  
3 finger that extended from the Black Belt into Jefferson County.

4 There is no dispute in this case as far as I know that the  
5 new plan, the 2023 plan, is basically the same as the 1992 plan  
6 when it comes to Jefferson County.

7 Let me read from the question presented in the Supreme  
8 Court when the defendants appealed the previous preliminary  
9 injunction. Here, they're discussing the 2021 plan.

10 Alabama's congressional districts have looked largely the  
11 same for decades. Since 1992, one of Alabama's seven districts  
12 has been a majority-black district. In 2021, Alabama enacted a  
13 congressional redistricting plan that retained the cores of  
14 those districts, including the state's one majority black  
15 congressional district.

16 And in 2023, nothing changed substantially. Certainly the  
17 state did not argue in its response to our motion for a  
18 preliminary injunction that any legally significant changes to  
19 the Jefferson County finger have happened between the 2021 plan  
20 and the 2023 plan.

21 So the shape is now basically the same as it was when  
22 according to Secretary Merrill it was racially gerrymandered.

23 Let's talk about the other half of the shape and  
24 demographics evidence, the demographics. The way the 2023 plan  
25 splits Jefferson County slightly more than half of the

1 residents are in District 7. But 71 percent of Jefferson  
2 County's black residents are in District 7. So if you are  
3 black, you are about two-and-a-half times as likely to be in  
4 District 7 as you are in District 6.

5 That's significant because in *Cooper vs. Harris*, the  
6 Supreme Court said the following, when holding that a district  
7 in North Carolina was a racial gerrymander: The result is a  
8 district with stark racial borders. Within the same counties,  
9 the portions that fall inside District 1 have black populations  
10 two to three times larger than the portions placed in the  
11 neighboring districts.

12 That's exactly what we have here. The black population  
13 that is two to three times larger as the population in the  
14 neighboring district.

15 Under the Supreme Court's formulation, then, that is a  
16 stark racial border.

17 Beyond the shape and demographics, we have what I would  
18 call indirect evidence of legislative purpose in the rejection  
19 of the Singleton plan.

20 Suzanne, could you please put up Exhibit 6?

21 This is a plan that Senator Bobby Singleton introduced  
22 during the special session. And as Secretary Merrill stated in  
23 the *Chestnut* litigation, the Legislature had leeway in plan  
24 design. After the 2010 censuses, Alabama was constrained to  
25 some extent in the congressional districts it could draw

1 because it was subject to the preclearance regime of Section 5  
2 of the Voting Rights Act.

3 The coverage formula that subjected Alabama to Section 5  
4 was invalidated in 2013 by the Supreme Court. So beginning  
5 with the 2020 cycle, as Secretary Merrill acknowledged, there  
6 was a lot more freedom. And Senator Singleton proposed a plan  
7 that does everything the Legislature said it wanted out of a  
8 plan.

9 Like the enacted plan, it has zero population deviation,  
10 or plus or minus one person, as close as you can possibly get.  
11 It is contiguous. It is compact. It is slightly less compact  
12 than the 2023 plan, but it is about as compact as the 2021  
13 plan. It respects communities of interest. It keeps almost  
14 all of the Black Belt in a single district. It actually would  
15 have been mathematically impossible to put more of the Black  
16 Belt in a single district.

17 The enacted plan cuts the Black Belt in half, puts half of  
18 the Black Belt in a district that is not an opportunity  
19 district, and the other half in a district that it has to share  
20 with urban Birmingham. And as Senator Singleton will testify,  
21 that impairs the representation of the Black Belt in Congress.

22 The Singleton plan keeps Mobile and Baldwin County  
23 together. And we don't have a view as the Singleton plaintiffs  
24 on whether Mobile and Baldwin is a community of interest for  
25 purposes of the Voting Rights Act analysis. But even assuming

1 for the sake of argument that it is, the Singleton plan keeps  
2 it together.

3 The Singleton plan keeps the Wiregrass together. Again,  
4 we don't have a view on whether that is an important enough  
5 community of interest under the Voting Rights Act, but we keep  
6 it together, anyway.

7 And the Singleton plan keeps together an important  
8 community of interest that the enacted plan does not --  
9 Jefferson County, while the enacted plan cuts Jefferson County  
10 roughly in half.

11 So in keeping communities of interest together, the  
12 Singleton plan outperforms the enacted plan.

13 The Legislature said that it was interested in complying  
14 with the Voting Rights Act. The United States has filed a  
15 brief in this case saying that you test opportunity districts  
16 by seeing who got more votes in those proposed districts in  
17 statewide races in previous elections.

18 In the Singleton plan, the Jefferson County district and  
19 the Black Belt district usually elected the candidate of choice  
20 for black voters. I shouldn't say elected. The candidate of  
21 choice for black voters got more votes than their opponent in  
22 those districts in most of the elections over the past  
23 ten years that were contested statewide elections.

24 The defendants have not disputed that the enacted plan  
25 fails to provide for a second opportunity district. So in the

1 metric of Voting Rights Act compliance, the Singleton plan  
2 outperforms.

3       The only other interest that the state identified that are  
4 important here are core retention and incumbency protection.  
5 And I will be the first to admit that on those two measures,  
6 the Singleton plan does not perform as well as the enacted  
7 plan. And that is for a very good reason that I will explain  
8 in more detail later, that when you are starting with a racial  
9 gerrymander, preserving the core of a district or protecting  
10 incumbents is going to perpetuate the racial gerrymander, which  
11 is why the Eleventh Circuit has said it's not legitimate.

12       So despite having a map in front of them that performed  
13 better on every legitimate metric than the plan that was  
14 ultimately enacted, the Legislature rejected that. And we  
15 believe that is further circumstantial evidence that the state  
16 Legislature intended to maintain lines that separate voters by  
17 race.

18       The defendants have said in their response that we -- that  
19 the Singleton plaintiffs cannot taint the 2023 Legislature with  
20 the intent of previous map drawers. And as we've laid out in  
21 our brief, that's not what we're doing. We're not saying that  
22 the Legislature had any intent other than the intent to  
23 maintain these lines. And we don't have to show racial animus  
24 because this isn't an intentional discrimination claim. We are  
25 focused on the district lines and how they separate people by

1 race.

2       The shape of those borders, the demographics of those  
3 districts, and the Legislature's rejection of a plan that  
4 achieves all of the Legislature's goals without drawing  
5 race-based lines leads to the inevitable conclusion that this  
6 is a racial gerrymander.

7       Now, when a defendant claims, as the defendants do here,  
8 that they were just maintaining previous district shapes, then  
9 they put at issue the reasons that those shapes were originally  
10 drawn. That becomes relevant evidence.

11       The district court's opinion in the recent Jacksonville  
12 City Council case at 635 F.Supp.3d 1229 discusses this point,  
13 and it's on page 1286.

14       In that case, the district court looked -- when it was  
15 claimed that the Jacksonville City Council was just maintaining  
16 previous district lines, the district court then went back and  
17 looked at what the reasons behind those original district lines  
18 were. And the Eleventh Circuit agreed. The Eleventh Circuit  
19 said that maintaining previous district lines is not a  
20 legitimate objective when previous districts are gerrymandered.

21       Another district court recently did the same thing in  
22 *GRACE, Inc. vs. City of Miami* in the Southern District of  
23 Florida. It stated that its finding of gerrymandering was  
24 buttressed by the defendant's intent to draw -- to preserve  
25 race-based lines.

1           And there's no dispute in this case about why Jefferson  
2 County was split the way it was in the first place. It was  
3 designed to separate black and white voters.

4           If the defendants' theory of protecting incumbents and  
5 preserving the cores of districts were correct, a Legislature  
6 could enact the most extreme gerrymander it could think of.  
7 Then the next Legislature could reenact it in the name of core  
8 retention and incumbency protection, and that district would be  
9 immunized from challenge forever. That is fundamentally  
10 consistent with the way the Supreme Court has described the  
11 harm that follows from race-based districting.

12           Why should this Court address the constitutional claim  
13 now, when it has a Voting Rights Act claim pending?

14           Understandably, the first time around, this Court  
15 prioritized rendering a decision on a statutory violation over  
16 rendering a decision on constitutional violation citing the  
17 canon of constitutional avoidance.

18           But now that we're farther down the road, we can see that  
19 the defendants seem to be planning an appeal to the Supreme  
20 Court and another challenge to the constitutionality of Section  
21 2 itself, or attempting to overrule *Gingles* in whole or in  
22 part.

23           If this Court does not decide the equal protection issue  
24 at this stage of the case, and such an appeal takes place, the  
25 Supreme Court will be forced to decide whether the Voting

1 Rights Act is constitutional, which is an even more serious  
2 constitutional question than just whether one particular  
3 defendant violated the constitution.

4 That is why we think that the Court, even if it does  
5 decide the Voting Rights Act claim in the plaintiffs' favor,  
6 should then proceed to also decide the racial gerrymandering  
7 claim.

8 Even if the Court doesn't make a liability finding on the  
9 gerrymandering claim, though, the special master is still going  
10 to need instruction on how to draw districts. Those -- I don't  
11 think anyone would dispute that those districts have to comply  
12 with the Constitution. And so the constitutional law will need  
13 to be laid out for the special master and the cartographer one  
14 way or another.

15 Just last year, the U.S. Supreme Court reversed the  
16 Wisconsin Supreme Court for creating a majority-black  
17 opportunity district without first considering whether it was  
18 necessary to do so. The Court said: The question that our VRA  
19 precedents ask and the Court failed to answer is whether a  
20 race-neutral alternative that did not add a seventh district  
21 majority-black district would deny black voters equal  
22 opportunity.

23 The Singleton plan is a race-neutral plan that adds an  
24 opportunity district, and it unites communities that the state  
25 has failed to unite. Those communities have been divided by

1 race for too long. And so even if there is no liability  
2 finding on the gerrymandering claim, it will be crucial when a  
3 remedial plan is drawn by the special master to ensure that  
4 that process follows the Equal Protection Clause.

5 Thank you.

6 JUDGE MARCUS: Thanks very much. For the defense,  
7 opening statement.

8 MR. LACOUR: Good morning, Your Honors.

9 JUDGE MARCUS: Good morning.

10 MR. LACOUR: Plaintiff's raising a racial gerrymander  
11 claim like the Singleton plaintiffs here bare a very demanding  
12 evidentiary burden.

13 To begin, the good faith of the Legislature must be  
14 presumed.

15 Second, plaintiffs must show that the Legislature acted  
16 because of, not merely in spite of race, and this task when  
17 evaluating the actions of a large legislative body like the  
18 Alabama Legislature is, in the words of the Eleventh Circuit's  
19 Greater Birmingham Ministries decision, a near impossible  
20 challenge. Moreover, this presumption of good faith applies  
21 with special force when we're dealing with the redistricting  
22 context.

23 So plaintiffs offer one theory, really, as to how they've  
24 satisfied this demanding burden of proof. And it's that  
25 District 7 was drawn in 1992 in a race predominant fashion.

1 But, of course, the 1992 map is not before this Court. It's  
2 the 2023 plan that is before this Court, and a mere passing  
3 resemblance between District 7 in the map from 31 years ago is  
4 insufficient evidence as a matter of law to prove a racial  
5 gerrymander claim as to the 2023 plan.

6 At least two major problems with their theory. The first  
7 is the decision from the Supreme Court in 2001 *Easley vs.*  
8 *Cromartie*, I will refer to as *Cromartie 2*, where the Court made  
9 clear there's nothing unconstitutional about a district that  
10 has a large minority population or even majority-minority  
11 population so long as that district was not drawn for  
12 predominantly racial reasons.

13 If traditional or political reasons explain the  
14 demographics of the district, then there's no constitutional  
15 claim against that district.

16 And so core retention, for example, trying not to pair  
17 incumbents against one another, trying to draw compact  
18 districts or preserve communities of interest, if any of those  
19 are explanation for the district, that defeats the racial  
20 gerrymandering claim.

21 The Jacksonville case that Mr. Quillen referred to is not  
22 to the contrary. That was an instance where the Court found  
23 that the core retention was being used for racial reasons.  
24 And, of course, any principle that's used pretextually to  
25 accomplish a racial goal can be -- can be evidence of a racial

1 gerrymandering claim.

2 But the core retention is being used because of the  
3 traditional reasons why it would be used and has been used  
4 since the founding of our nation to draw districts. Then, that  
5 does not create a constitutional problem unless it is, again,  
6 shown that there is some racially predominant reason that's  
7 justified the use of that traditional principle.

8 The second fundamental problem is more of a factual one,  
9 is that the 2023 map does not look like the 1992 map other than  
10 the fact that there is a split in Jefferson County. They  
11 referred to it as a finger, but you can see the portion of  
12 Jefferson County that is in District 7 now is far more compact  
13 than it was back in 1992.

14 The demographics of District 7 are significantly  
15 different, as well. I believe we were around 65 percent Black  
16 Voting Age Population or black total population in 1992. Of  
17 course, the District 7 now is a little bit above 50 percent.  
18 That's a significant difference. Another significant  
19 difference in District 7 is that it is no longer in Montgomery  
20 County.

21 So that fundamental factual premise of their argument is  
22 simply not borne out.

23 The other facts that were alleged that I think fairly weak  
24 circumstantial evidence is also based on a misstatement of the  
25 record. We have no obligation to identify -- I mean, we have

1 no obligation to adopt the Singleton plaintiffs' map or Senator  
2 Smitherman's map as a constitutional matter. And especially  
3 because it is not -- it does not perform better on the  
4 traditional principles that are advanced in the 2023 plan.

5 Mr. Quillen admitted that on core retention, they do not  
6 perform better when it comes to pairing incumbents. They do  
7 not perform better when it comes to compactness. They do not  
8 perform better. They claimed that it performed as well on  
9 communities of interest, but that is not true either.

10 Two of the nine Wiregrass counties are divided from the  
11 rest of the Wiregrass counties in the plan that he showed you a  
12 moment ago.

13 When it comes to the Black Belt and why they keep the 18  
14 core counties into just two districts, they split two of the  
15 sometimes Black Belt counties off of District 7 and leave them  
16 in District 1.

17 So, again, on all those principles, they do not perform  
18 better, which devastates the notion that failure to adopt one  
19 of those plans was on account of race as opposed to on account  
20 of traditional districting principles.

21 Indeed *Cromartie 2* would say that this sort of weak  
22 circumstantial evidence is, as a matter of law, insufficient to  
23 show racial predominance.

24 *Covington* case is not to the contrary. That final  
25 judgment on a racial gerrymandering claim. So you had a court

1 that already looked at the evidence, and it found race  
2 predominance in a plan, and then found that the next  
3 Legislature that came along refused to make substantial changes  
4 for -- so they could lock in that racial predominance in the  
5 next plan. We don't have a similar finding here.

6 Obviously, there's been no racial gerrymandering claim  
7 successful against the '92 map, the 2001 map, the 2011 map, the  
8 2021 either. So we're in a fundamentally different factual and  
9 legal setting when it comes to the racial gerrymandering claim,  
10 which just leaves us with the obvious alternative explanations  
11 for the 2023 plan vis-a-vis the plans that the Singleton  
12 plaintiffs have proposed.

13 And because we have those obvious alternative explanations  
14 based in traditional districting principles, that is honestly  
15 enough to dismiss their case and their 12(b)(6). And when they  
16 do file an amended complaint, we will move to dismiss their  
17 complaint on those grounds. But for similar reasons, their  
18 preliminary injunction motion should be denied.

19 JUDGE MARCUS: Thank you very much.

20 Mr. Quillen, are you ready to proceed?

21 MR. QUILLEN: Yes, Your Honor.

22 JUDGE MARCUS: Let me ask just one preliminary  
23 question of you. And, Mr. Walker, did you have something you  
24 wanted to raise? I'm sorry.

25 MR. WALKER: Your Honor, we had reached an agreement

1 about some exhibits, and I wanted to put that on the record, if  
2 I may.

3 JUDGE MARCUS: Okay. Let me just ask this preliminary  
4 question of all of you. We discussed this yesterday in the  
5 other case, the remedial proceeding. I take it that the  
6 evidence that was presented in round one, when, Mr. Quillen,  
7 you participated, is relevant and admissible for purposes here.  
8 There's no dispute about what was done then as an evidential  
9 matter is part of this record today in your case, correct?

10 MR. QUILLEN: That's our understanding, yes.

11 MR. WALKER: That's correct.

12 MR. DAVIS: Yes, Your Honor. We agree with one  
13 caveat. The defendants entered into some stipulations with the  
14 Singleton plaintiffs for purposes of the preliminary  
15 injunction. Since that time, the Singleton plaintiffs reduced  
16 those stipulations to request for admission to which we have  
17 responded. We addressed those requests for admission responses  
18 yesterday.

19 We -- instead of the stipulations, the defendants say we  
20 should rely on the defendants' answers to the Singleton  
21 plaintiffs' RFAs.

22 JUDGE MARCUS: With that caveat though, I take it that  
23 defendants agree that the record from round one is part of the  
24 record in round two.

25 MR. DAVIS: We do.

1 JUDGE MARCUS: All right. Thank you.

2 So I just say that to you so there are some things you may  
3 not have to replot or reinvent.

4 Mr. Quillen?

5 MR. QUILLEN: We would like at this time to move the  
6 admission of our exhibits.

7 JUDGE MARCUS: Let's go through them. I, by my count,  
8 you have 43 of them.

9 MR. QUILLEN: That's correct.

10 JUDGE MARCUS: If I have looked at -- am I looking at  
11 the right list? This is the Singleton plaintiffs' third  
12 amended exhibit list.

13 MR. QUILLEN: That is correct.

14 JUDGE MARCUS: Okay. If you take your time and speak  
15 into the mic so that our reporter can get it all down, we would  
16 be much appreciative.

17 MR. QUILLEN: Thank you, Your Honor.

18 JUDGE MARCUS: You just take your time. Let me cut to  
19 the chase and see what is open to objection. And we can  
20 otherwise rule on the balance of those.

21 Mr. Walker, I take it you will be taking the laboring oar  
22 on this exhibit list?

23 MR. WALKER: I will, Your Honor. Thank you.

24 Your Honor, Exhibits 5, 6, 7, and 8 each deals with a  
25 proposed plan. The first page of those exhibits is the map of

1 the plan followed by two pages of data. The third page of each  
2 of those exhibits presents partisan data to which the  
3 defendants have objected, and my understanding is that the  
4 plaintiffs have agreed to withdraw that partisan data, which is  
5 the third page of Exhibits 5, 6, 7, and 8.

6 JUDGE MARCUS: Is that what you have agreed to,  
7 Mr. Quillen?

8 MR. QUILLEN: Yes. The partisan data is on pages with  
9 other data that we may use, like racial data, so there's no way  
10 to withdraw the exhibit, but we have agreed with Mr. Walker we  
11 will not be citing --

12 JUDGE MARCUS: So you are not offering that portion  
13 which contains the partisan data, but you are offering  
14 everything else.

15 MR. QUILLEN: That's correct.

16 JUDGE MARCUS: I take it with that, you have no  
17 objection to the receipt of 5, 6, 7, and 8, Mr. Walker?

18 Mr. Walker, with that caveat, do you have any objection to  
19 the receipt of 5, 6, 7, and 8?

20 MR. WALKER: No, Your Honor, we do not.

21 JUDGE MARCUS: All right. So the record is clear,  
22 Mr. Quillen, with that one caveat, we have received 5 through  
23 8.

24 What about the balance of them?

25 MR. WALKER: There are two more, Your Honor.

1 JUDGE MARCUS: Sure.

2 MR. WALKER: Actually, there may be three.

3 Exhibit 16 is a composite exhibit summary of election  
4 results from prior elections. The defendants would like to  
5 reserve an objection to that until the plaintiffs lay a  
6 foundation for the admission of that composite exhibit.

7 JUDGE MARCUS: Are you planning to put in some  
8 foundation on 16?

9 MR. QUILLEN: Yes. We are going to lay a foundation  
10 for that exhibit with Senator Singleton.

11 JUDGE MARCUS: All right. We will reserve on that  
12 subject to connection.

13 Anything else in the list of 43?

14 MR. WALKER: Yes, sir. The Exhibit 17 is an article,  
15 Disqualified Jefferson County Judicial Candidate Still Gets  
16 Most Votes. We objected to that with the defendants on the  
17 basis of hearsay, and they agreed to withdraw the article.

18 JUDGE MARCUS: Is that correct? You are withdrawing  
19 17?

20 MR. QUILLEN: That's correct.

21 JUDGE MARCUS: All right.

22 MR. WALKER: And then finally, Your Honor, I think I  
23 have to apologize to the Court. I just learned that there are  
24 exhibits beyond 37. They are apparently up to 43 now, and I  
25 have not seen 38 through 43, so I am not sure what they are,

1 and I don't know if we have an objection to them.

2 MR. QUILLEN: I can tell you 38 is the Secretary of  
3 State's answers to our first request for production.

4 MR. WALKER: No objection.

5 MR. QUILLEN: 39 through 43 are all spreadsheets that  
6 were produced by the Secretary of State.

7 MR. WALKER: No objection to those either, Your Honor.

8 JUDGE MARCUS: All right. So if I have this right,  
9 Mr. Walker, with the caveat about 5 through 8, the withdrawal  
10 of 17, and reserving on 16 subject to the foundation, you have  
11 no objection to the receipt of all of these exhibits?

12 MR. WALKER: That is correct, Your Honor.

13 JUDGE MARCUS: All right. Just so we're clear, then,  
14 we've received 1, the '92 plan map; 2, the 2001 plan map; 3,  
15 the 2011 plan map; 4, the '21 plan map; 5 through 8 as I said  
16 subject to that one issue.

17 We received 9, the precinct level details of the southern  
18 border of the '23 CD7 plan in Jefferson County.

19 We received 10, the precinct level details of the northern  
20 border.

21 We have received 11, the Caster/Milligan letter to the  
22 reapportionment committee.

23 We've received 12, the Caster/Milligan letter to  
24 Mr. Walker.

25 13, we received Blacksher letter to Dorman Walker.

1 14, Marshal letter to Dorman Walker.

2 15, Caster/Milligan letter to Walker.

3 We've reserved as I said on 16.

4 17 is withdrawn.

5 18, Andrews voter registration information from the  
6 Secretary of State, received.

7 19, Singleton voter registration information from the  
8 Secretary of State, received.

9 20, Slay voter registration information from the Secretary  
10 of State, received.

11 21, Smitherman voter registration information from the  
12 Secretary, received.

13 22, Walker voter registration information from the  
14 Secretary, received.

15 23, the CLC 1 map from the legislative website.

16 What is that? Just tell me what that is, Mr. Quillen.

17 MR. QUILLEN: The CLC map 1 is the -- is an older name  
18 for the Singleton plan. The plan that Senator Singleton  
19 offered at the special session was originally created by the  
20 Campaign Legal Center, and that's why it's called CLC map.

21 JUDGE MARCUS: Gotcha. We've received it without  
22 objection.

23 24, the 2012 certified election results, received without  
24 objection.

25 25, the 2014 certified election results, received without

1 objection.

2 26, 27, 28, are the certified election results for 2016,  
3 '17, and '18, respectively all received.

4 29 and 30 are the certified election results for 2020 and  
5 2022. They are both received.

6 31, 32, and 33 are certified election results for Shelby  
7 County for 2018, 2020, and 2022. They are all received.

8 34, the defendants' responses and objections to the  
9 Singleton plaintiffs' first requests for admissions without  
10 objection, received.

11 35, the trial deposition of Leonette Slay with exhibits  
12 taken August 10, 2023.

13 What is that?

14 MR. QUILLEN: Leonette Slay is one of the Singleton  
15 plaintiffs. She was going to be out of the country this week,  
16 so we noticed her deposition. So this is a trial deposition.

17 JUDGE MARCUS: Gotcha. And she was cross-examined?  
18 You had the chance to speak with her, Mr. Davis, Mr. LaCour?

19 MR. DAVIS: Yes, we did. We have no objection.

20 JUDGE MARCUS: All right. Without objection, 35 is  
21 received.

22 36, defendant Secretary Allen's objections and responses  
23 to the Singleton's third set of requests for admission.  
24 Received without objection.

25 37, the defendant Allen's answer to Singleton plaintiffs'

1 second set of interrogatories. I take it, again, that was in  
2 the 2023 case, this one?

3 MR. QUILLEN: That is correct.

4 JUDGE MARCUS: Received without objection.

5 And we've already ruled on and received 38 through 43  
6 inclusive.

7 So that covers everything except that one exhibit, which  
8 you will lay the foundation for.

9 With that, you may proceed -- I'm sorry, Mr. Walker,  
10 something else you wanted to raise?

11 MR. WALKER: No, sir, Your Honor.

12 JUDGE MARCUS: We will go through your exhibits when  
13 we get to your case one by one.

14 MR. WALKER: Thank you, Your Honor.

15 JUDGE MARCUS: And, of course, to the extent you want  
16 to use them for cross-examination of the witness, just feel  
17 free to do that.

18 MR. WALKER: Thank you.

19 JUDGE MARCUS: So you want to proceed with your first  
20 witness?

21 MR. QUILLEN: Yes, Your Honor. The Singleton  
22 plaintiffs call Senator Bobby Singleton.

23 JUDGE MARCUS: All right. If you will come up to the  
24 witness stand.

25 Frankie, would you swear him, please.

1 BOBBY SINGLETON,  
2 having been first duly sworn by the courtroom deputy clerk, was  
3 examined and testified as follows:

4 THE COURTROOM DEPUTY CLERK: Please state and spell  
5 your first name for the record.

6 THE WITNESS: Bobby Singleton, B-O-B-B-Y  
7 S-I-N-G-L-E-T-O-N.

8 THE COURTROOM DEPUTY CLERK: Thank you.

9 JUDGE MARCUS: Thank you, sir. You have may proceed.

10 DIRECT EXAMINATION

11 BY MR. QUILLEN:

12 Q Senator Singleton, what is your race?

13 A I am African-American black.

14 Q Where did you grow up?

15 A Greensboro, Alabama in the Black Belt.

16 Q What is your elected office?

17 A Alabama state senator, District 24.

18 Q And how long have you been a senator?

19 A I've been a senator for now right at 18, 19 years.

20 Q Do you hold a leadership position in the Senate?

21 A I do. I serve as the Senate minority leader.

22 Q What was your elected office before you were a senator?

23 A I served in the House of Representatives for  
24 two-and-a-half years. There was a special election then. I  
25 was elected to the Senate in 2005.

1 Q Tell me about your Senate district.

2 A My Senate district is diverse. It's takes up majority of  
3 the Black Belt. It holds about six counties now. It has  
4 varied over the years through the redistricting process.

5 I have six counties -- Hale, Greene, Sumter, Marengo,  
6 Choctaw, and Tuscaloosa Counties.

7 Q How much of your district would you say is in the Black  
8 Belt?

9 A 90 percent of it.

10 Q Okay. Did you have a role in the redistricting process  
11 that took place in the Legislature last month?

12 A Yes. I served on the reapportionment -- permanent  
13 reapportionment committee.

14 Q What was the role of the reapportionment committee in that  
15 process?

16 A Well, the reapportionment committee held two meetings  
17 prior to the special session. The first meeting was to a  
18 public hearing opening up to allow the public to be able to  
19 bring in maps and present any information that they wanted to  
20 present.

21 We heard from the public for maybe two or three hours.  
22 Also, the second meeting, we were presented with several maps  
23 that had been presented in the Supreme Court prior to hearing  
24 what the Singleton map and some other maps that we had never  
25 seen before was presented to us. We were able to present our

1 maps, give any data that we had on our maps, and the public was  
2 also able to do the same thing.

3 Q What did the reapportionment committee do with the input  
4 it received through that process?

5 A Nothing. We have not seen any of the maps. Outside the  
6 maps, the Singleton maps, the maps that Smitherman introduced  
7 and/or the plaintiffs introduced, we didn't see any of the  
8 other maps that came from the public.

9 Q Where did the maps that were ultimately voted on by the  
10 House and Senate come from?

11 A Well, the maps that were ultimately voted from the House  
12 and Senate were maps that presented on the last -- I think it  
13 was maps called the opportunity maps and the community of  
14 interest map that was introduced, and it was several maps with  
15 weird names. We were asking questions of where they came from.  
16 Who is the author of those maps? We never got any information  
17 from it, where they were. Those maps were introduced on the  
18 first day of the legislative session.

19 I introduced my map on the first day of the legislative  
20 session through the process that we have to go through. I  
21 think other legislators introduced their maps also from both  
22 parties, Republican and Democratic parties.

23 Q For the community of interest map and the opportunity map,  
24 did you ever ask where those maps came from?

25 A Yes, we did.

1 Q Did you get answers to your questions?

2 A I didn't get any answer to any questions on that. We did  
3 not know where the maps came from, and we didn't know who  
4 authored the maps. Only -- well, I apologize. There was only  
5 one map. I think co-chairman Pringle then took credit for one  
6 of the maps. I think it was the community of interest map.

7 Q Now, two maps eventually passed the House and the Senate,  
8 correct?

9 A Yes.

10 Q Did the reapportionment committee draw those maps?

11 A No. As member of the reapportionment committee, I put in  
12 writing to the committee asking for any input on -- an all maps  
13 and all the functionality reports that the committee was going  
14 to produce. I asked to be at the table to meet with the  
15 demographer, the lawyers so that we could all draw the map  
16 together. And I was told that we don't have the information  
17 yet and we wasn't going to do anything until they get any  
18 information that they needed.

19 Q Okay. The Legislature ultimately enacted a plan that  
20 we're going to refer to as the 2023 plan, if that's okay.

21 What role, if any, did the committee have in developing  
22 the 2023 plan?

23 A Zero.

24 MR. QUILLEN: Cindy, could you put up Exhibit 6,  
25 please?

1 BY MR. QUILLEN:

2 Q In front of you is a document that's been admitted as  
3 Exhibit 6. Is this the plan that you introduced at the special  
4 session?

5 A Yes, sir, it is.

6 Q When you introduced this plan, did you submit any other  
7 information with it?

8 A Yes. I introduced the functionality report with this map  
9 that showed previous races where the democrats could win in  
10 both of the districts.

11 MR. QUILLEN: Suzanne, could you put up Exhibit 16,  
12 please?

13 Let's see if we can -- can we shrink that down?

14 BY MR. QUILLEN:

15 Q Is this the document that you're referring to?

16 A Yes, sir.

17 Q Okay.

18 MR. QUILLEN: Senator Singleton is looking at the  
19 document that we have offered as Exhibit 16, and we would like  
20 to move it into evidence at this time.

21 JUDGE MARCUS: Any objection? Mr. Walker?

22 MR. WALKER: Your Honor, I thought the foundation was  
23 going to be laid with this showing where the data came from.  
24 And I think we would like to know where the data came from  
25 before --

1 JUDGE MARCUS: Why don't you proceed, Mr. Quillen, to  
2 lay a more complete foundation for 16; what it is, where it  
3 came from, what Mr. Singleton's role was in connection with the  
4 preparation of this document, please.

5 BY MR. QUILLEN:

6 Q Senator Singleton, what is this document?

7 A This document basically shows previous races for  
8 presidents, and I think for the years of -- for the Obama  
9 years, also, when President Clinton ran in -- I can't see the  
10 whole full document if it can pull up. And also give other  
11 statewide races for lieutenant governor and governorships  
12 across the board.

13 Q Okay. And what do -- what do the numbers in this document  
14 refer to?

15 A What these numbers refer to is in the 20 -- for instance,  
16 in the 2012 race, the Obama/Romney race, it shows the  
17 percentages that in the two districts that are drawn what  
18 democrats won and had in those districts and based on the plan  
19 what those numbers would have been in the particular plan.

20 Q Okay. We'll see if that's what --

21 JUDGE MARCUS: Any follow-up questions you have,  
22 Mr. Walker, by way of voir dire on the document?

23 MR. WALKER: Yes, Your Honor.

24 JUDGE MARCUS: You may proceed.

25 MR. WALKER: If it please the Court. If we could know

1 who prepared the document and what the source of the data were.

2 THE WITNESS: Well, I received the documents from my  
3 attorneys.

4 MR. WALKER: Your Honor, I think we can accept  
5 Mr. Quillen's representation about where the numbers came from.

6 MR. DAVIS: We don't mean to put Mr. Quillen on the  
7 spot, but if counsel is willing to tell us where the numbers  
8 came from and how they were calculated, maybe perhaps we could  
9 short circuit this.

10 JUDGE MARCUS: Mr. Quillen, I take it your witness  
11 does not know where the data came from. Perhaps if you could  
12 tell us, or through the witness, we may be able to cut right to  
13 the chase.

14 MR. QUILLEN: I can tell -- I can tell you that we did  
15 what the United States said you do in a case like this. You go  
16 county by county, precinct by precinct, and see who got how  
17 many votes in those races.

18 JUDGE MARCUS: When you say we, you mean counsel?

19 MR. QUILLEN: Yes.

20 JUDGE MARCUS: So if I understand it right, counsel  
21 prepared it, gave it to Smitherman.

22 MR. QUILLEN: And Singleton.

23 JUDGE MARCUS: And Smitherman in turn gave it to the  
24 witness? Do I have that right?

25 MR. QUILLEN: We provided a copy of this to Senator

1 Singleton and Senator Smitherman, and both of them --

2 JUDGE MARCUS: Okay. So this was your document that  
3 you gave to both representatives?

4 MR. QUILLEN: Right. And the reason we're putting it  
5 into evidence is because it was then introduced on the floor of  
6 the Senate.

7 JUDGE MARCUS: Any objection?

8 MR. WALKER: No objection to the admission of 16, Your  
9 Honor.

10 JUDGE MARCUS: Without objection, 16 is received.  
11 Thank you.

12 BY MR. QUILLEN:

13 Q Senator Singleton, after you introduced this document on  
14 the floor of the Senate, did anyone question its accuracy?

15 A No.

16 Q Did anyone tell you that the two opportunity districts in  
17 your plan were likely to elect Republicans?

18 A I was told that in a sidebar conversation, yes, sir.

19 Q Okay. What was your Republican colleagues' reaction to  
20 the plan that you introduced in the Senate?

21 A Well, they liked the plan based on the community of  
22 interest. They thought that our plan kept their communities  
23 intact. They liked what it did based on those communities of  
24 interest, and that was basically their liking of it -- of what  
25 we was doing was keeping their communities of interest intact.

1 Q When your plan was put up for a vote, what happened?

2 A Well, the way it come up for a vote is that when it went  
3 through committee, we were able to put up in committee and  
4 introduce the same data and information in the committee, we  
5 were voted down. We came back to the floor. The sponsoring  
6 senator put his map up. We had an opportunity to substitute  
7 our map at that time to substitute on the floor. And we put  
8 our substitute up. And I was able to go through the process of  
9 explaining my map with all of the data that goes with it, and  
10 we asked for an up or down vote, and it was voted down on party  
11 lines.

12 MR. QUILLEN: Suzanne, could you put Exhibit 6 back  
13 up, please?

14 BY MR. QUILLEN:

15 Q Senator Singleton, why did you submit this particular  
16 plan?

17 A Well, when I look at all the other alternatives, it was  
18 the best alternative that was out there. Because this map  
19 keeps the Black Belt whole, 90 percent of it, except two  
20 counties. And it makes Jefferson County whole.

21 And, you know, I have been around long enough to know that  
22 in Jefferson County, I've seen where crossover votes have made  
23 a difference in where people elected African-Americans county  
24 wide, and in the Black Belt, the same. And I think this is the  
25 best opportunity that we have.

1 Q How do you feel that your plan would perform with respect  
2 to providing effective representation in Congress for members  
3 of the Black Belt?

4 A Well, when we look at what we already have for the 1992  
5 maps, based on what we have, the congressional person now is  
6 competing trying to represent us with Jefferson and the Black  
7 Belt together. Here, it would give us the opportunity to have  
8 our own -- in the Black Belt, to have our own congressional  
9 person to deal with those issues that we have. We have unique  
10 issues in the Black Belt that's been systemic over the years;  
11 poverty, housing, joblessness.

12 And so when you look at the number of federal dollars that  
13 come into our area, it's less than 1 percent of the federal  
14 dollars that come into the state. We really have no one there  
15 advocating for us. So I think that we need someone for the  
16 Black Belt. It will perform very well. We are seeing across  
17 the board where African-Americans has been elected in all of  
18 these counties, and we think that Jefferson County as a whole  
19 would do great on its own.

20 Q In your opinion, how similar are the issues of the Black  
21 Belt to the issues of urban Birmingham?

22 A We are far apart. We're really far apart.

23 You know, and while there may be some issues that are the  
24 same, but the Black Belt has some really and truly unique  
25 issues that need to be concentrated on. And that's why we

1 definitely need our own representation here.

2 I think Jefferson County -- you know, when we started the  
3 competing against for grants and things in Jefferson and in the  
4 Black Belt, most of the time those grants comes with matching  
5 dollars. Jefferson always win over the Black Belt because most  
6 of those communities are poor and just doesn't have anyone to  
7 represent them wholly.

8 Q Okay.

9 MR. QUILLEN: Suzanne, can you put up Exhibit 5,  
10 please?

11 BY MR. QUILLEN:

12 Q Senator Singleton, this is Exhibit 5, which is the plan  
13 that was actually enacted by the Legislature.

14 Could you please look at it and tell me what you think the  
15 effect of this plan will be on the Black Belt's representation  
16 in Congress?

17 A First of all, I think it splits the Black Belt in half.  
18 It looks like it has about nine counties in east and nine  
19 counties in the west.

20 Together, the Black Belt is strong when it is unified.  
21 And that's why I tried to make sure that we had a map that  
22 unified the Black Belt as much as possible. In as much as we  
23 left out two counties on ours, but they were basically the  
24 counties of far east and down south.

25 But this map would show that it would give -- especially

1 in the east. I just can't see anyone winning in the eastern  
2 quarter, and those Black Belt communities would definitely be  
3 totally underrepresented more than they are now.

4 Q Do you think that under your plan black voters would have  
5 an equal opportunity to elect the candidates of their choice in  
6 two districts?

7 A Yes, I do. Given the opportunity with the right  
8 candidates and people out there, when black voters come  
9 together and realize that they have that opportunity, we come  
10 out to vote. So I think that that opportunity is there under  
11 my map.

12 MR. QUILLEN: Suzanne, can you put up Exhibit 36,  
13 please?

14 BY MR. QUILLEN:

15 Q Senator Singleton, I don't know if you've seen this  
16 document before, but this is the defendants' response to the  
17 Singleton plaintiffs' request for admission.

18 This is a request for admission that was admitted.

19 JUDGE MARCUS: Can you tell me what number that is?

20 MR. QUILLEN: This is Exhibit 36.

21 JUDGE MARCUS: Defendant 36 or your 36?

22 MR. QUILLEN: Our 36.

23 JUDGE MARCUS: Gotcha.

24 BY MR. QUILLEN:

25 Q Senator Singleton, this is a list showing who received the

1 most votes in contested statewide elections since 2012 in the  
2 Jefferson County district in your map and the Black Belt  
3 district in your map.

4       You said a minute ago that you think that candidates of  
5 choice for black voters will have the opportunity to win. Does  
6 it worry you that there are some races here in which the  
7 democrat did not receive more votes?

8 A     No, it doesn't worry me at all.

9 Q     Why is that?

10 A    Well, I think when you give the opportunity in the  
11 performance of what we see, if you look at the majority of the  
12 time, democrat has won. And I think when you look at years  
13 like 2014, which was I think was a down year for democrats, I  
14 would call it nationally, but at that time, the candidates of  
15 choice that was running basically were candidates that was  
16 underfunded, running against candidates that had higher name  
17 recognition than they were across the board. So I think they  
18 are given the equal opportunity that we can perform, and I  
19 really feel good about the performance of this district.

20 Q    How about the 2022 governor's race in which the Republican  
21 Kay Ivey got more votes in your Jefferson County district than  
22 the Democrat Yolanda Flowers?

23 A    Well, I think when you look at that race, Governor Ivey  
24 probably spent 800 to 1 against Ms. Flowers. Ms. Flowers  
25 didn't have any name recognition.

1 I think that there was a lot going against her at that  
2 time. But even in this district, Ms. Flowers performed at  
3 49.1 percent in that district when I looked back at the  
4 numbers. She performed very, very well. And so I think that  
5 with a candidate that can be well funded, have good  
6 organization, name recognition, we can win in that district. I  
7 will take my chances.

8 Q All right.

9 MR. QUILLEN: Thank you, Senator Singleton. I will  
10 pass the witness.

11 JUDGE MARCUS: Thank you. Cross-examination?

12 CROSS-EXAMINATION

13 BY MR. DAVIS:

14 Q Good morning, Senator.

15 A Good morning. How you doing?

16 Q Doing well. My name is Jim Davis. I represent Secretary  
17 of State Wes Allen in this litigation. And we have spoken  
18 before in this case, have we not?

19 A Yes, sir.

20 Q Senator, Mr. Quillen said in his opening statement that  
21 one of the reasons you advocated for the plan or that the  
22 Singleton plaintiffs advocated for the Singleton plan was that  
23 it kept Jefferson County together?

24 A Yes, sir.

25 Q Do you agree that view?

1 A Yes, sir.

2 Q Your plan splits Tuscaloosa County, does it not?

3 A Yes, it does.

4 Q What is more important about submitting --

5 MR. DAVIS: I apologize, Your Honor. My watch thought  
6 it was talking to it.

7 JUDGE MARCUS: That's all right. It happens to all of  
8 us all the time.

9 BY MR. DAVIS:

10 Q I do apologize.

11 Is Tuscaloosa County less important than Jefferson County?

12 A No. I think all counties -- I would hope that all 67  
13 counties are equal in this state.

14 Q Is there anything more important about keeping Jefferson  
15 County whole than other counties that your plan splits?

16 A Well, Jefferson is the largest county in this state with  
17 the larger population. And going in and splitting Jefferson  
18 unnecessarily when you can make a congressional district out of  
19 Jefferson makes sense to me.

20 Q You do not reside in Jefferson County?

21 A No, I do not.

22 Q And you do in the presently represent Jefferson County?

23 A No, I do not.

24 Q Are you generally familiar with Jefferson County?

25 A I -- generally, yes.

1 Q Would you not agree that there's a lot of diversity in  
2 Jefferson County, meaning there are rural areas and urban  
3 areas, for example?

4 A Yes, sir.

5 Q There are areas that -- where maybe the primary industry  
6 is finance, and other areas where it's manufacturing or coal  
7 mining?

8 A Yeah, but it's still Jefferson County.

9 Q Now, you are here today to tell the Court that you favor  
10 your plan, the Singleton plan?

11 A Absolutely.

12 Q And I understand one of your claims, am I right, that it's  
13 that you believe the finger into Jefferson County in the plan  
14 or the part of the Legislature's 2023 plan that goes into  
15 Jefferson County, do you contend that that is a racial  
16 gerrymander?

17 A Would you put it up for me, please? Let me look at it?  
18 You talking about the finger that goes in that we call the  
19 finger?

20 MR. QUILLEN: Suzanne, could you put up exhibit --

21 JUDGE MARCUS: Let's see. Mr. Quillen, can we put the  
22 map up for the witness, please?

23 MR. QUILLEN: Yes. We are doing that now.

24 JUDGE MARCUS: Thank you.

25 THE WITNESS: I'm just asking for clarity. That's

1 all.

2 BY MR. DAVIS:

3 Q Of course. And no. You are entitled to do so. Do you  
4 contend that District 7 is a racial gerrymander?

5 A I think it -- because it still has the same shape of the  
6 1992, and the Court has already ruled that that was racial  
7 gerrymander, so I would assume that it is.

8 Q Okay.

9 MR. DAVIS: Thank you.

10 MR. QUILLEN: Would you like us to take it down?

11 MR. DAVIS: Please.

12 Pardon me, Your Honor.

13 JUDGE MARCUS: Sure.

14 MR. DAVIS: I will move on to something else for a  
15 moment.

16 JUDGE MARCUS: Sure.

17 BY MR. DAVIS:

18 Q If I understood you right, Senator Singleton, you said you  
19 contend that your plan -- to switch back to the Singleton plan  
20 -- that your plan provides two districts to provide an  
21 opportunity for African-American voters to elect their  
22 candidate of choice?

23 A Yes, sir.

24 Q But isn't it true that your plan does not have any  
25 majority-black districts?

1 A Yeah. It doesn't have a majority-black district, but what  
2 it does is have what I looked at the numbers called democratic  
3 lean districts that allows us the opportunity to be able to  
4 elect an African-American or the person of our choice.

5 Q Okay. So is it your view that an opportunity district  
6 does not necessarily have to be majority black?

7 A Based on the opportunity we're looking at, no.

8 Q And you have been in Alabama politics for some time now,  
9 right?

10 A Correct.

11 Q You have been serving in the Legislature since the early  
12 2000s?

13 A 2002, yes.

14 Q And do you consider yourself knowledgeable about what it  
15 would take to provide an opportunity for black voters?

16 A An opportunity district just came along, you know. We  
17 have been dealing with, you know, percentage of district of  
18 65 percent and 50 percent in the past. So these -- since this  
19 Court hearing was the first time we have been really talking  
20 about opportunity district. So I can't say that I have that  
21 knowledge of what it would take to be an opportunity district,  
22 no. I am not an expert at that.

23 Q I wasn't asking if you are an expert. But are you  
24 knowledgeable in Alabama politics generally?

25 A I would think so.

1 Q And as we saw when Mr. Quillen was discussing with you  
2 Exhibit 36, our request for production -- our request for  
3 admission responses, that sometimes those districts elect  
4 republicans, or rather the Republican candidates got the most  
5 votes?

6 A Yes.

7 Q You still believe though that provides an opportunity for  
8 black voter?

9 A I do.

10 Q And if I understood you right, you said one reason why you  
11 felt that way was because there were occasions when the  
12 democratic candidate was less funded than the Republican  
13 candidate?

14 A I mentioned that, yes.

15 Q Do you agree with that?

16 A I agree with that.

17 Q Okay.

18 A And especially in the case that was asked about,  
19 Ms. Flowers.

20 Q Yes.

21 A Yes.

22 Q So you would think that a better-funded candidate might  
23 perform better, and the results may have been different?

24 A Not just only funding. I think name recognition goes  
25 along with it, organization, you know. It all goes along with

1 it. All of those tenets that makes a good candidate.

2 Q And we also looked at Exhibit 16. If you remember, that  
3 was the chart that you said you got from your attorneys that  
4 you presented with your plan?

5 A Yes.

6 Q Okay. And that chart also show that sometimes the  
7 Republican candidate got the most votes in your plan in the two  
8 opportunity districts?

9 A Yes.

10 Q But that doesn't change your mind. You believe your  
11 district provides two opportunity districts?

12 A I think it provides two opportunity districts where we can  
13 perform, yes.

14 Q By the way, is it unusual when you're introducing a bill  
15 in the Legislature for you to get legal advice before you  
16 submit a bill?

17 A Is it -- I'm sorry?

18 Q Do you sometimes get legal advice from counsel before you  
19 submit a bill to the Legislature?

20 A Yes, if I'm -- before a bill? Just any bill?

21 Q Yes.

22 A Well, no, not necessarily from counsel on any bill. There  
23 are occasions where that does happen, yes.

24 Q And in this case, when you submitted a bill to present  
25 your plan to the Legislature, you got input from legal counsel?

1 A Yes.

2 Q But it's still your bill, correct?

3 A Yes.

4 Q And you decided whether to submit that bill and what  
5 information to provide with it?

6 A Yes.

7 Q Okay.

8 Now, when you were discussing your plan going to the  
9 Legislature, I believe I heard you say that it went through a  
10 committee?

11 A Yes, sir, it did.

12 Q Now, for clarification, was that the reapportionment  
13 committee, or was that some other committee?

14 A No. The bills went through the strangest committee. I  
15 think it went through confirmations committee.

16 The permanent reapportionment is not a standing  
17 legislative committee, so we had to put it in a legislative  
18 committee. And Senator Livingston chairs the confirmation  
19 committee, and he was one of the co-chairs, so that's where  
20 they put it.

21 Q I see. Did you draw the map that was presented as the  
22 Singleton plan?

23 A No, I did not.

24 Q When the Legislature was considering various maps during  
25 the special session, were all members of the Senate able to

1 vote yea or nay on each map that was presented?

2 A Yes.

3 Q And were they all permitted to vote yea or nay on any  
4 amendments offered?

5 A Well on the floor, they were. Not in committee. Not in  
6 committee. Because all senators are not on the reapportionment  
7 committee.

8 Q I see. Okay. But on the floor, all members of the Senate  
9 were entitled to vote yea or nay?

10 A Yes.

11 Q They had that ability?

12 A They did.

13 Q And when they went through various -- when the various  
14 bills went through the committees, each member of the various  
15 committees were able to vote yea or nay; is that correct?

16 A Yes. Yes.

17 Q And as far as you know, was that true for the House of  
18 Representatives, as well?

19 A Yes.

20 Q Were different maps than yours presented by different  
21 minority members of the Legislature during the special session?

22 A Yes, they were.

23 Q Was there not a lot of difference in the different maps  
24 presented to the Legislature, including those submitted by  
25 different members of the minority party?

1 A Yes, there was some difference yes.

2 Q Would you agree that there have been differences of  
3 opinion within the minority party about which plan would best  
4 serve African-American voters?

5 A It could be. We -- we -- yes, that could be.

6 MR. DAVIS: I would like to show Senator Singleton a  
7 map. I am going to first confer and make sure that Singleton  
8 plaintiff -- and then may I approach the witness?

9 JUDGE MARCUS: You may indeed. Just make sure we know  
10 exactly what exhibit you're showing him.

11 MR. DAVIS: Of course.

12 Your Honors, I would now like to show Senator Singleton a  
13 copy of Document 169-8. I believe it's been filed in the  
14 Singleton case. This is titled, The Figures Congressional  
15 Plan. It's also been referred to in this case as the VRA plan  
16 submitted by the Caster and Milligan plaintiffs.

17 JUDGE MARCUS: So we have actually received it in the  
18 other case?

19 MR. DAVIS: You have received a version of this map.  
20 It may not be this particular sheet of paper, but you have  
21 received this map.

22 JUDGE MARCUS: I understand. You're showing him the  
23 VRA map that Caster and Milligan submitted to the  
24 reapportionment committee and that was part of their objection  
25 and was received in evidence?

1 MR. DAVIS: Correct.

2 JUDGE MARCUS: Correct? You may proceed. Thank you.

3 BY MR. DAVIS:

4 Q Senator Singleton, are you able now to see the figures  
5 congressional map or the VRA map?

6 A Yes.

7 Q Are you familiar with that map?

8 A I'm not really familiar with it. I looked at this map.  
9 That map changed a couple of times. But I think this is the  
10 final plan.

11 Q Okay.

12 A Yes.

13 Q Now, you contend that the map that the Legislature passed  
14 is a racial gerrymander because of the part that goes into  
15 Jefferson County, correct?

16 A Correct.

17 Q Is this map, which also goes into Jefferson County, a  
18 racial gerrymander?

19 A Well, if you look at it, it could very well be. The way  
20 it goes into Jefferson and the way it goes down into Mobile  
21 into the black community. If it was -- if it was drawn based  
22 on race -- predominantly by race, it would be.

23 Q What about the part that goes into Dothan, if you are  
24 familiar enough with Houston County to say?

25 A Which part would you say? I see Henry that goes down into

1 Houston a little bit?

2 Q Correct.

3 A That very well could be. I don't know what -- I don't  
4 know who they pick up. Are they picking up black -- the black  
5 community in that district?

6 Q Let me try to ask a better question.

7 A Okay.

8 Q If that map goes into Houston County for the purpose of  
9 picking up black voters to add them into that district, do you  
10 think that very well may be a racial gerrymander?

11 A I don't know. I think you can go in and pick up voters  
12 without being gerrymandered if you are trying to achieve a  
13 particular purpose, so I don't know what they were trying to  
14 achieve here.

15 Q Okay. So you would agree that it matters why a  
16 Legislature goes into a county as to whether or not that's a  
17 racial gerrymander?

18 A I could agree with that.

19 MR. DAVIS: Those are all the questions I have.

20 JUDGE MARCUS: Thank you. Redirect, Mr. Quillen?

21 REDIRECT EXAMINATION

22 BY MR. QUILLEN:

23 Q Senator Singleton, you were asked some questions about  
24 Tuscaloosa County. Do you remember that?

25 A Yes.

1 MR. QUILLEN: Suzanne, could we have Exhibit 6 on the  
2 screen, please? And can you zoom in on Tuscaloosa County?

3 BY MR. QUILLEN:

4 Q Senator Singleton, this is the plan you introduced. Can  
5 you see in this plan how Tuscaloosa County is split between  
6 District 7 and District 4?

7 A Yes, I can.

8 Q Okay. Were you in the Legislature when it passed the 2021  
9 plan?

10 A Yes, I was.

11 MR. QUILLEN: Suzanne, could you, please, put up  
12 Exhibit 4, please, and zoom in on Tuscaloosa County?

13 BY MR. QUILLEN:

14 Q Senator Singleton, can you see how -- this is -- I should  
15 tell you what you're looking at. This is Exhibit 4 that's been  
16 admitted into evidence. This was the map that was enacted in  
17 2021.

18 Does the enacted split of Tuscaloosa County in this map  
19 look identical to the one that is in your plan?

20 A It has an identical look, yes.

21 Q Okay.

22 MR. QUILLEN: That's all I have.

23 JUDGE MARCUS: Mr. Singleton, I have a question for  
24 you --

25 THE WITNESS: Yes, sir.

1 JUDGE MARCUS: -- if you could help me.

2 You were asked some questions on direct examination by  
3 Mr. Quillen about the role you played in this process --

4 THE WITNESS: Yes, sir.

5 JUDGE MARCUS: -- before the reapportionment  
6 committee.

7 I just have two specific questions --

8 THE WITNESS: Yes, sir.

9 JUDGE MARCUS: -- regarding that.

10 Did you play any role in the findings of fact that the  
11 Legislature made that accompanied SB-5?

12 THE WITNESS: No, sir.

13 JUDGE MARCUS: Did you see that those findings at any  
14 time before they were codified?

15 THE WITNESS: No, sir.

16 JUDGE MARCUS: All right. Thank you.

17 Any follow-up questions based on anything I may have  
18 asked, Mr. Quillen? Mr. Davis?

19 MR. DAVIS: Nothing from us, Your Honor.

20 MR. QUILLEN: No, Your Honor.

21 JUDGE MARCUS: Thank you much.

22 Thank you much, Mr. Singleton. You can step down. And  
23 you are excused.

24 THE WITNESS: Thank you.

25 JUDGE MARCUS: Mr. Quillen, anything else by way of

1 live testimony that the Singleton plaintiffs want to present?

2 MR. QUILLEN: No. We will rest.

3 JUDGE MARCUS: You are resting your case at this  
4 point?

5 MR. QUILLEN: Yes.

6 JUDGE MARCUS: Thank you.

7 Mr. Davis, the floor is yours. You have may proceed with  
8 your case.

9 MR. DAVIS: Thank you, Your Honor.

10 As we said, we do not intend to call any live witnesses.  
11 We intend to rely on our exhibits.

12 I would also like to move into evidence two of the  
13 exhibits that we discussed yesterday. They were the two that  
14 you asked me for more information about.

15 JUDGE MARCUS: Sure.

16 MR. DAVIS: One is exhibit T from the defendants'  
17 exhibit list. Those are responses to requests for admissions,  
18 which I believe we have had different sets, maybe different  
19 from the ones that we've discussed during Senator Singleton's  
20 response.

21 So we move for admission of Exhibit T.

22 JUDGE MARCUS: T was the defendant Secretary of State  
23 Wes Allen's objections and responses to Singleton plaintiffs'  
24 first set of request for admission.

25 MR. QUILLEN: No objection.

1 JUDGE MARCUS: We will receive it.

2 MR. DAVIS: Second and finally, Your Honor, defendants  
3 move for admission of Exhibit Z, which is a set of historical  
4 maps, historical congressional maps in Alabama.

5 JUDGE MARCUS: I want to be sure that I have that  
6 right. That was Exhibit 7 to Singleton plaintiffs' renewed  
7 motion for preliminary injunction?

8 MR. DAVIS: Correct.

9 JUDGE MARCUS: Any objection?

10 MR. QUILLEN: No objection.

11 JUDGE MARCUS: Without objection, Z is received.

12 MR. DAVIS: And defendants rest, Your Honor.

13 JUDGE MARCUS: All right. So just so we're clear, I  
14 want to make sure we have gone over and ruled on each of the  
15 exhibits.

16 Was there anything else that we have? We have ruled  
17 yesterday. You went through most of these or Mr. LaCour did.

18 MR. DAVIS: From our perspective, yes, we believe the  
19 Court has ruled on all.

20 JUDGE MARCUS: All right. So both sides are resting  
21 their case. Do I have that right?

22 MR. DAVIS: Correct, Your Honor.

23 JUDGE MARCUS: We will take a short break, and then  
24 you can proceed to closing argument.

25 Mr. Quillen, are you going to be presenting the closing?

1 MR. QUILLEN: I am. And I will be -- if it's okay  
2 with the defendants, I will be inviting Judge U. W. Clemon up  
3 to --

4 JUDGE MARCUS: You may split your argument with  
5 Mr. Clemon if you wish.

6 We will give each side a maximum of one hour for close.  
7 You need not use it all, but we will give it to you.

8 Mr. Davis, you will be doing the closing or Mr. LaCour?

9 MR. LACOUR: I will handle the closing, Your Honor.

10 JUDGE MARCUS: Okay. We will take a 15-minute recess.  
11 When we come back, we will proceed to closing argument. Thank  
12 you.

13 (Recess.)

14 JUDGE MARCUS: Mr. Quillen, how are you going to break  
15 up your argument?

16 MR. QUILLEN: I intend to speak for just a few minutes  
17 at most, and then I will call Mr. Clemon up to speak for a few  
18 minutes as well.

19 JUDGE MARCUS: All right.

20 MR. QUILLEN: Sorry. I had that backwards.  
21 Mr. Clemon is going to speak for a few minutes, and then I am  
22 going to speak.

23 JUDGE MARCUS: All right. Mr. Clemon, come on up and  
24 speak with us. Thank you.

25 JUDGE CLEMON: May it please the Court.

1           This octogenarian thought his speaking role in this  
2 proceeding was over when we decided not to call a second live  
3 witness. But there are some arguments that have been made that  
4 I think compel me to make a response as a life-long resident of  
5 Jefferson County, except for my three years of law school.

6           First of all, with respect to the definition of the Black  
7 Belt, the Milligan plaintiffs and the Caster plaintiffs defined  
8 the Black Belt for Your Honors, and you said so in your earlier  
9 order at page 37.

10           You say that the Milligan parties stipulated that the  
11 Black Belt is named for the region's fertile black soil. The  
12 region has a substantial black population because of the many  
13 enslaved people brought there to work in the antebellum period.  
14 All of the counties in the Black Belt are majority or near  
15 majority BVAP. And you cite a Milligan document.

16           They further stipulate that the Black Belt includes 18  
17 core counties, and then they name 18 counties. Neither one of  
18 which is Jefferson County.

19           And then they say that an additional five counties --  
20 Clark, Conecuh, Escambia, Monroe, and Washington -- are  
21 sometimes included within the definition. But nowhere in the  
22 definition of Black Belt counties is Jefferson County.

23           Now, it was rather remarkable that in yesterday's  
24 proceeding throughout that proceeding as I sat there, I never  
25 heard the phrase Jefferson County mentioned. None of the

1 Milligan plaintiffs live in Jefferson County. And although two  
2 of the eight Caster plaintiffs live in Jefferson County, the  
3 Caster plaintiffs did not mention Jefferson County at all  
4 yesterday.

5 Yet they would include the state's largest county, most  
6 urban county, in a district which they've advanced for this  
7 Court's consideration, and we say, yes, that is a racial  
8 gerrymander.

9 And, Your Honors, they now disavow the whole county  
10 concept. But that's not what they said to you, and it's not  
11 what you found. You said the Milligan plaintiffs contend --  
12 this is on page 37 -- contend that the Legislature could have  
13 more naturally drawn a second majority-black congressional  
14 district that comprised with traditional redistricting  
15 principles like maintaining whole counties and respects the  
16 contiguity and communities of accurate interest in the black  
17 belt counties. That's what they said to you earlier, and  
18 that's what you found.

19 Now they disavow the whole county concept.

20 Now, Your Honors, it's, we think important to remember,  
21 yes, there is a relationship between the Black Belt and  
22 Jefferson County. Many of our relatives left the Black Belt  
23 back in the '30s and '40s and '50s precisely because we knew  
24 that Jefferson County was a different community, and we wanted  
25 to be a part of that different community. It still is.

1           The -- to the extent that the state now disavows that  
2 Jefferson County, where blacks are in the minority, that  
3 Jefferson County gives to black the opportunity to select  
4 candidates of their own choosing, we ask you to just look at  
5 the evidence that's in the record. Because if you live in  
6 Jefferson County, have lived here for the last 20 years or so,  
7 you know that blacks, even though they are a majority of the  
8 county -- yes, elected a Republican sheriff for many years, and  
9 then two elections ago they decided they wanted one of their  
10 own as a sheriff, and they elected him, and elected him again,  
11 despite substantial opposition.

12           The last elected probate judge in Jefferson County was a  
13 white democrat. The circuit judge, a circuit clerk of  
14 Jefferson County is a black democrat. So there can be no  
15 realistic denying that Jefferson County, with its minority  
16 black population, affords black -- blacks the opportunity to  
17 choose residents of their own county -- of their own choosing,  
18 as they so choose.

19           Another thing, Your Honors, is that the Milligan and  
20 Caster plaintiffs have taken the position that you have said  
21 that any remedial plan will need to include two districts in  
22 which black voters compose either a majority -- voting-age  
23 majority or something quite close to it.

24           That's not what you said. You said that although -- I'm  
25 sorry -- and both sets of plaintiffs -- this is at page 213 --

1 concede that the Legislature has discretion to decide whether  
2 to enact a remedial plan that contains two majority-black  
3 districts or two districts in which black voters otherwise have  
4 an opportunity to elect a representative of their choice or a  
5 combination of those districts.

6 And then you follow, but both sets of plaintiffs also  
7 suggest -- and mind you, at this point, we, the Singleton  
8 plaintiffs, had not had an opportunity to present any evidence  
9 -- you then write, both sets of plaintiffs also suggest and we  
10 agree that as a practical reality, the evidence of  
11 racially-polarized voting educed during the preliminary hearing  
12 proceedings suggests that any remedial plan would need to  
13 include two districts in which black voters would either  
14 compose of voting-age majority or something quite close to it.

15 We wanted to bring those arguments of the Milligan and  
16 Caster plaintiffs before this Court and what this Court has  
17 found in light of what they have claimed yesterday.

18 Thank you.

19 JUDGE MARCUS: Thank you, sir.

20 Mr. Quillen?

21 MR. QUILLEN: Thank you, Your Honors.

22 This was an evidentiary hearing, and we came with  
23 evidence. We came with dozens of exhibits. We came with  
24 witness testimony, both live and by deposition. And that  
25 evidence was designed to meet our burden of proof, which we

1 laid out for you in the opening that the lines that separate  
2 white and black voters in Jefferson County do just that.

3 We have evidence of the history. We have evidence in the  
4 form of Secretary Merrill's own admission that the 1992 plan  
5 was a racial gerrymander. We have the solicitor general's own  
6 statements to the Supreme Court about how similar the modern  
7 plans are to the 1992 plan.

8 Now the defendants are trying to walk that back. They say  
9 that the new plan and its appendage that reaches up from the  
10 Black Belt to surround the voters -- the black voters of  
11 Jefferson County may bear a passing resemblance to the 1992  
12 plan. That is not what they told the Supreme Court. And they  
13 have no evidence that there is any legally relevant difference.

14 JUDGE MARCUS: Let me ask you a question.

15 MR. QUILLEN: Yes.

16 JUDGE MARCUS: Argument from lawyers is one thing. It  
17 isn't evidence. They say if you look at the map, SB-5,  
18 Congressional District 7, it's markedly different from the  
19 original CD 7 drawn back, if you go back to 23 -- to 1993.  
20 They say, one, CD 7 is substantially more compact; two -- than  
21 it was in '92. They say second, the black population drops  
22 from BVAP from roughly 65 percent to 50 percent; and three,  
23 Montgomery County is no longer in CD 7. Therefore, they say,  
24 making those observations, that this is a very different map,  
25 even assuming that it's true and it's undeniable that the map

1 reflects a finger sticking up as it's drawn.

2           What do you say about that? Isn't it different in a  
3 meaningful way, or is it your sense that it matters not that  
4 it's more compact, that the demographics have substantially  
5 changed, and Montgomery County is not in it?

6           MR. QUILLEN: All of those changes are driven by  
7 changes to the southern part of the district, which really  
8 doesn't help our Jefferson County plaintiffs who are being  
9 separated by race from their white counterparts by lines in  
10 Jefferson County.

11           Jefferson County still does the same thing it's done since  
12 1992. There is a line that goes around the urban core of  
13 Birmingham because that is predominantly where the black voters  
14 are. And we have come with evidence of demographics to show  
15 that if you are black in Jefferson County, you are about  
16 two-and-a-half times as likely to be in District 7 than in  
17 District 6, which the Supreme Court has said is prohibitive  
18 evidence. They said that in a situation where that ratio was  
19 between two and three, that was evidence of stark racial  
20 divides.

21           So I don't dispute that Montgomery, for instance, is not  
22 gerrymandered anymore. Previous iterations of the state's  
23 plans reached into Montgomery to take black population and add  
24 it to District 7. That is not happening anymore.

25           But we have Jefferson County plaintiffs whose equal

1 protection rights are being violated because they are still  
2 being separated by race under a plan that in Jefferson County,  
3 where they live, has not meaningfully changed since 1992.

4 JUDGE MARCUS: In your view, is it relevant that this  
5 map, SB-5, which looks a whole like the 2021 plan, HB-1, and  
6 looks like the plan going back from the beginning in the  
7 respect that there is this thumb pushing up into Jefferson  
8 County from CD 7, does it not matter that that map essentially  
9 ratified by the Courts in '93, ratified by the Supreme Court,  
10 and essentially continued round after round after round --  
11 2000, '10, and '21 -- is it relevant that the courts have  
12 ratified that and that it has been reiterated by my count four  
13 times?

14 MR. QUILLEN: I am glad you brought that up. Because  
15 of the particular history of this district, it's not relevant.

16 The district was created in 1992. The goal of the  
17 district was to have something as close to 65 percent BVAP as  
18 possible. Something that we all -- I think every justice of  
19 the Supreme Court now would say that's something you just can't  
20 do.

21 JUDGE MARCUS: But they cured that problem, did they  
22 not?

23 MR. QUILLEN: They -- no, they did not --

24 JUDGE MARCUS: They cured it in the sense that the  
25 BVAP --

1 MR. QUILLEN: Yes.

2 JUDGE MARCUS: -- drops 20 percent.

3 MR. QUILLEN: The BVAP has dropped about 15 percent  
4 over the years largely due to those changes in the southern  
5 part of the district that we were talking about.

6 So in 1992, the plan separates voters by race. Nobody  
7 disputes that. Not until 1993 does the Supreme Court decide  
8 that separating voters by race in that manner is a racial  
9 gerrymander.

10 Now, did the Alabama Legislature have the obligation to go  
11 back and fix it? I don't have a view one way or the other.

12 But you mentioned that the Supreme Court ratified that  
13 plan. There were two appeals of the *Wesch* that created  
14 District 7. Neither of them presented that question.

15 So, in fact, the questions that went up to the Supreme  
16 Court were from parties who actually wanted it to be more  
17 gerrymandered than it was. And the Supreme Court said no.

18 So the Supreme Court never blessed the fact that it was a  
19 gerrymander.

20 JUDGE MARCUS: Let me ask it a slightly different way.

21 MR. QUILLEN: Uh-huh.

22 JUDGE MARCUS: Can you hear me okay?

23 MR. QUILLEN: Yes.

24 JUDGE MARCUS: Is it your view -- and these are my  
25 words in the question, not yours -- that the original sin found

1 in the '93 map has never been changed, and, therefore, it does  
2 not matter that it was reiterated time after time by the  
3 legislatures and no courts have said you can't do that? Does  
4 it take on a legitimacy of its own, or does the original sin  
5 continue to taint CD 7 in your view right here in 2023?

6 MR. QUILLEN: It does not go away on its own. Because  
7 this is not -- there are cases -- voting rights cases where a  
8 facially neutral law may be enacted for discriminatory reasons,  
9 and it sticks around so long that the reason for it fades away,  
10 and it can no longer be challenged. But that is not how a  
11 gerrymandering claim works. Because every time a voter votes  
12 in a district that they were put into because of lines that  
13 separate voters by race, the lines persist. That continues.  
14 So what happened in 2010 also doesn't mean that it's not a  
15 racial gerrymander. The way we see it, the lines separate  
16 voters by race in 1992.

17 In 1993, the Supreme Court says that's a racial  
18 gerrymander. But not all racial gerrymanders are  
19 unconstitutional. A racial gerrymander can comply with the  
20 Equal Protection Clause if it can satisfy strict scrutiny.

21 And so in 2000 and 2010, the state had what it claimed was  
22 a compelling interest, that it was under the preclearance  
23 regime of Section 5, that if it made significant changes to the  
24 shape of District 7, it would not get those districts  
25 precleared by the Justice Department.

1           And it was probably right. If they drew more race-neutral  
2 districts, if they drew lines that did not separate voters by  
3 race, probably the Justice Department would not have precleared  
4 those districts.

5           In 2013, the Supreme Court decided *Shelby County vs.*  
6 *Holder*. And for Alabama, the preclearance regime went away.

7           2020 was the first redistricting cycle in which Alabama  
8 had the freedom to draw districts that did not separate voters  
9 by race.

10           So the fact that they did it in 2000 and 2010 doesn't mean  
11 it wasn't a racial gerrymander. It absolutely was. But it was  
12 a racial gerrymander that may have been able to satisfy strict  
13 scrutiny because it was done to comply with the preclearance  
14 requirement.

15           Here, the state has not offered any argument that if this  
16 is found to be a racial gerrymander, it would satisfy strict  
17 scrutiny. They have made the argument entirely about whether  
18 it is a racial gerrymander in the first place. And it is. It  
19 has been since 1992. And it may not have been an  
20 unconstitutional racial gerrymander back when Section 5 was  
21 still in effect, but it is now because it cannot satisfy strict  
22 scrutiny.

23           I would just like to reiterate one point that I made this  
24 morning. Ironically, deciding the constitutional issue in this  
25 case is the way to avoid a constitutional showdown at this

1 Supreme Court.

2       You know, maybe Mr. LaCour will surprise me, and he will  
3 come up and he will tell you that the state does not intend to  
4 challenge any aspect of the constitutionality of Section 2 or  
5 *Gingles* if this case goes on appeal.

6       But if he's not willing to make that representation to  
7 you, then deciding the constitutional claim is your opportunity  
8 to make sure that the Supreme Court is not forced to rule on  
9 the constitutionality of a statute when they could have taken  
10 the lesser step of ruling on whether a particular defendant  
11 violated a constitutional provision in a way that would fit  
12 comfortably under their precedence, including *North Carolina*  
13 *vs. Covington*.

14       Thank you.

15               JUDGE MARCUS: Thanks very much.

16               MR. LACOUR: Thank you, Your Honors. I will briefly  
17 try to plug in my computer. And if that does not work, I will  
18 abandon that and just point you to where you can find these two  
19 maps in the record.

20       So, Your Honors, I will just start with what we were  
21 discussing earlier that there is a dramatic difference between  
22 the 1992 plan and the 2023 plan. So this is the 2023 plan. So  
23 you can see, yes, there is a substantial portion of Jefferson  
24 County in District 7, but I would hardly describe that as a  
25 finger.

1           If you want to see what a finger looks like, you can just  
2 go back to 1992. And it is dramatically different. And I will  
3 zoom in. And you can see that does not look like a  
4 particularly compact portion of Jefferson County being placed  
5 into District 7. It's one of those -- you might describe it as  
6 an appendage or tentacle to borrow some of the language from  
7 the Supreme Court's gerrymandering jurisprudence. It's not the  
8 case. The factual matter that the 1992 map and 2023 map are so  
9 similar that some gerrymander has been carried forward or  
10 perpetuated over the last 31 years.

11           I assume that many of the voters who lived in old District  
12 7 are no longer in District 7 have moved. You have new people  
13 moving in. It's a totally new map, totally different context,  
14 which then brings us back to *Cromartie 2*, as I mentioned  
15 before. Even if there are -- even if District 7 is a  
16 majority-minority district, that alone is not a constitutional  
17 violation.

18           There's no -- in the Supreme Court's words -- no  
19 affirmative obligation to avoid drawing a majority-minority  
20 district under the Equal Protection Clause. There's simply an  
21 obligation not to do so for predominantly racial reasons.

22           Mr. Quillen, I think I heard him say at one point there  
23 was perhaps -- perhaps an obligation for the Legislature to fix  
24 what had been done in '92, and then maybe saying that maybe  
25 there was not an obligation to do so.

1 I think *Cromartie 2* makes clear that whatever was done in  
2 1992, what is relevant is what was done -- what is relevant now  
3 is what was done in 2023 and why it was done.

4 And indeed, that's what Senator Singleton told you, as  
5 well. Why there might be a split somewhere matters. And it  
6 has to be the case because every Equal Protection Clause  
7 challenge is rooted in intent. If something can be perfectly  
8 constitutional if it's done for a neutral reason, and that  
9 exact same thing can be unconstitutional if done for a racial  
10 reason.

11 So intent matters. And proving intent is a very difficult  
12 thing for any plaintiff to do, particularly in the  
13 redistricting context.

14 And they have completely failed to carry that burden here  
15 today because there are several --

16 JUDGE MANASCO: Mr. LaCour, let me ask you a question  
17 about intent.

18 We heard testimony from Representative Pringle yesterday  
19 about the legislative findings that were appended to SB-5. And  
20 I asked whether his testimony should affect in any way whatever  
21 weight we assigned to those findings. And the answer was no.

22 We heard similar testimony today from Senator Singleton.  
23 So I the question again: Should his testimony either on its  
24 own or in connection with or in addition to Representative  
25 Pringle's testimony affect the amount of weight or however we

1 view the Legislature's findings in connection with SB-5?

2 MR. LACOUR: I don't think so, Your Honor, for three  
3 reasons. One is you have heard from three members of the  
4 140-member Legislature.

5 The second is there's presumption of regularity that  
6 attaches to any democratically enacted law.

7 And the third is the proof is in the pudding. You can  
8 look at the map, and you can see what it does, and that lines  
9 up with what was said in those findings.

10 JUDGE MANASCO: All right. So hypothetically, would  
11 there be any number of legislators that would change the  
12 answer? Meaning, I understand that Representative Pringle and  
13 Senator Singleton have testified for themselves. But if other  
14 legislators were to offer testimony that was similar in  
15 substance, suggesting that really the Legislature in substance  
16 never deliberated about those findings, I understand they all  
17 had the opportunity to see them before they cast their votes,  
18 but that those findings are not in substance the product of a  
19 deliberative legislative process, would that change the answer?

20 MR. LACOUR: I don't believe so, Your Honor. I think  
21 -- again, this is not like the Administrative Procedures Act,  
22 where there's some, like searching review of an agency action.  
23 This is the will -- I mean, this is the democratically enacted  
24 law of the state of Alabama.

25 Again, I can't imagine this Court hauling members of

1 Congress in and asking them one by one if they read the  
2 thousand-page omnibus bill that was passed when it comes to  
3 whatever laws that are enacted. I think -- this isn't in the  
4 record, but I think there's a -- and maybe it's apocryphal --  
5 but I seem to recall Nancy Pelosi saying of the Affordable Care  
6 Act, we've got to pass it to see what's in it. That doesn't  
7 render it somehow suspect as a constitutional matter. They --

8 JUDGE MANASCO: And to be clear, I am not asking about  
9 suspect as a constitutional matter. I understand it to be  
10 undisputed that they saw what they voted on before they cast  
11 their votes.

12 My question is more about the relative amount of weight  
13 that legislative intent, quote unquote, gets in our analysis.

14 MR. LACOUR: Your Honor, I think the relevant feature  
15 is whether there was a majority of the members of the  
16 Legislature who voted for a particular bill that had particular  
17 language in it, if there's majority in the House, majority in  
18 the Senate, and the Governor signs it into law, then that is  
19 the law of the state.

20 JUDGE MANASCO: Thank you.

21 JUDGE MARCUS: So it's of no relevance -- just to  
22 follow up on Judge Manasco's question -- it's of no relevance  
23 that the chair of the House Reapportionment Committee testified  
24 that I never saw the findings until it appeared with the bill  
25 and we were called upon to vote on it.

1 MR. LACOUR: Your Honor, I think --

2 JUDGE MARCUS: I am not asking you whether one can  
3 argue about what weight may be attributed to it. I'm asking a  
4 threshold question. Does it have any relevance to any of the  
5 issues before us?

6 MR. LACOUR: I don't think it has relevance to the  
7 issues before you in the gerrymandering claim or in the Section  
8 2 claims. The Arlington Heights factors do take into account  
9 how the legislative process went forward and if there were  
10 irregularities. I would not define any of the evidence you  
11 heard yesterday as an irregularity. But I am sure we will be  
12 hearing argument later in this case from the Milligan and the  
13 Caster plaintiffs suggesting that it is evidence of an  
14 irregularity.

15 So I think that's the only context that comes to mind at  
16 least from the case law where that sort of evidence might  
17 factor in.

18 But we are not here today to argue about an Arlington  
19 Heights intentional discrimination claim. We are here to talk  
20 about the shape of District 7.

21 JUDGE MARCUS: No. I understand. And I raise it  
22 because this morning we heard from Senator Singleton, and he  
23 was asked at some length and answered at some length about the  
24 process itself that was employed as the Legislature went about  
25 its business of adopting SB-5. And he said, I did this, I did

1 that, I did the other thing, but I had no involvement in X, Y,  
2 and Z, knew nothing about it, and basically only learned at the  
3 end of the day. It's a process basically point that I think he  
4 was making, and I think the thrust of the question that you're  
5 being asked is that Pringle essentially says similar things  
6 about the same. But he talks about process.

7 Aren't these pieces of evidence relevant as to the process  
8 employed by the Legislature in adopting SB-5?

9 MR. LACOUR: Yes. But the question, then, is where  
10 does that process point fit into a particular legal framework?  
11 And I don't think it really fits in when we're talking about  
12 *Gingles I* or if we're talking about a *Shaw* claim.

13 JUDGE MARCUS: Would it fit in under the Senate  
14 Factors? Would it fit in more precisely under, say, 8 and 9?

15 MR. LACOUR: Your Honor --

16 JUDGE MARCUS: Process is, of course, expressly made  
17 by 8 -- I'm just trying to get a sense of to what extent and  
18 how ought we to consider the body of evidence that was  
19 presented today in some ways; yesterday in some ways about the  
20 process the Alabama Legislature employed when they adopted this  
21 map.

22 We have got testimony from Singleton on it. We have got  
23 testimony from Pringle on it. We have got testimony from  
24 Livingston on it. We have got deposition testimony from  
25 Hinaman on it.

1           Is process relevant to the racial gerrymandering claim or  
2 the other claim? Is it part of this suit? Is it something  
3 that we are obliged to look at and take into account in some  
4 way in ruling on this?

5           MR. LACOUR: I don't think it really has any bearing  
6 on the racial gerrymandering claim. I don't think it -- it  
7 clearly has no bearing on *Gingles I*. And the totality of the  
8 circumstances is exceedingly broad test. So I suppose anything  
9 potentially could be a circumstance in the totality. But  
10 beyond that, I don't think it is particularly relevant, and we  
11 don't have broader context, either, as to how -- I don't know  
12 how many hundreds of bills have been passed in the last few  
13 Legislatures.

14           JUDGE MARCUS: No. And I appreciate your answer. But  
15 when I look at the record presented by the defendants, as well,  
16 exhibits offered by the defendants, as well, process is all  
17 over the defendants' showing, as well, both today and  
18 yesterday.

19           MR. LACOUR: When you say process, I would say most of  
20 our --

21           JUDGE MARCUS: By that, I mean to be more precise, the  
22 manner by which the Legislature went about passing SB-5.

23           MR. LACOUR: Well --

24           JUDGE MARCUS: What went into it, who they heard, who  
25 they called, who knew what, who said what, and here's the end

1 product.

2 MR. LACOUR: Yes. There's evidence about what was  
3 before the Legislature in 2023. And then the most important  
4 thing before the Court, though, is the result ultimately, and  
5 both for the Section 2 claim and for the racial gerrymandering  
6 claim.

7 JUDGE MARCUS: Thank you. I didn't mean to cut you  
8 off on your argument. I was just curious since we had heard a  
9 good deal of evidence about it, and there was a dispute about  
10 whether it counted at all, whether it counted for something,  
11 whether it counted for a lot.

12 MR. LACOUR: Thank you. I am happy to answer any  
13 other questions as we go. I don't think I will be a whole lot  
14 longer.

15 So as I was mentioning before, Senator Singleton said that  
16 it was important why a county is split, and there are several  
17 legitimate neutral reasons that explain why Jefferson County is  
18 split in the 2023 plan. The preexisting cores of districts,  
19 not wanting to pair Terry Sewell with another incumbent, as  
20 well as -- and we made the district more compact. We have to  
21 split six counties to get to equal population. That's what we  
22 have done here.

23 So there's going to be -- there are going to be six splits  
24 somewhere in the map. And I think it's far too subjective for  
25 them to come and say it should have been these other six that

1 were split rather than the split -- the six that you did split.

2 And I mean, at the core -- at the core of their argument  
3 is that the Equal Protection Clause somehow requires the state  
4 to consider race more to avoid a racial gerrymandering claim,  
5 which sounds backwards because it is.

6 It is enough for the state to move forward with  
7 traditional principles that have been blessed by the Supreme  
8 Court, and if that results in a district that is 50 percent  
9 Black Voting Age Population, that is not a constitutional  
10 problem under *Cromartie 2*. This case is not like the  
11 Jacksonville decision that they referenced during the opening  
12 statements. That record was replete with direct evidence of  
13 racial predominance. Nor is this like Covington, which if you  
14 go back and read the Supreme Court's decision, references an  
15 inexplicable divide of the city of Greensboro and other  
16 compelling pieces of circumstantial evidence. So just noted  
17 before, there are many neutral explanations for where why  
18 District 7 has the shape that it has.

19 Which means that the plaintiffs' argument reduces to the  
20 notion either that their plan is better, has some sort of  
21 subjective or political matter, which is not sufficient  
22 evidence of a racial gerrymander, or that it is better on  
23 objective factors.

24 But as we discussed during the opening, it is not better  
25 on objective factors. It is not more compact. It ignores

1 cores of preexisting districts. It pairs incumbents. It  
2 splits more Black Belt counties out of District 7 than the  
3 state's plan. And it splits two Wiregrass counties out of  
4 District 2, unlike the state's plan.

5 So across the board, it is not better. So it cannot be  
6 evidence that we adopted this plan for racial reasons when we  
7 have neutral reasons, and they couldn't come up with some  
8 alternative that advances those reasons, as well, but has some  
9 sort of different racial outcome. That might have been some  
10 good evidence. They don't have it, though.

11 So neutral principles explain the 2023 plan. Plaintiffs'  
12 claims fail. And for some reasons, their motion should be  
13 denied.

14 JUDGE MARCUS: Let me ask you just one final question  
15 from me. I understand your position is that Singleton has  
16 failed to carry its burden in this preliminary injunction  
17 hearing of establishing a racial gerrymander.

18 Are you also making the alternative argument that even if  
19 they had that CD 7 in its present form satisfies strict  
20 scrutiny, or that's not an issue you're raising at all?

21 MR. LACOUR: We have not advanced that argument.

22 JUDGE MARCUS: All right. Thank you very much.

23 MR. LACOUR: Thank you.

24 JUDGE MARCUS: Mr. Quillen, we will give you the last  
25 word. Did we hear from someone other than you, Mr. Quillen?

1 MR. QUILLEN: I will be brief, Your Honor.

2 One way to look at the finger of District 7 is to look at  
3 this shape, which is certainly a strange shape. It doesn't  
4 make the district compact to have a tentacle or a finger or  
5 thumb or whatever you want to call it reach far from the Black  
6 Belt into Jefferson County.

7 So you ask yourself, why is it shaped that way? Why is it  
8 shaped -- not shaped some other way? And the obvious answer is  
9 because it was shaped similar to that in 1992 for explicitly  
10 racial purposes.

11 JUDGE MARCUS: Well, you know, it's interesting. When  
12 Mr. LaCour just got up a moment ago and put up on the screen  
13 the map of the '93 iteration, it was a finger, but it looked a  
14 whole lot different, he says, than the new one. Is that not  
15 true? And if it is true, does it matter?

16 MR. QUILLEN: It is not a whole lot different. What  
17 that obscures is population density, that where the 1993 finger  
18 is, is the densest population in all of Jefferson County.

19 As some population has been added to District 7 over time,  
20 it's spread out. But it looks bigger than it is.

21 For example, a large part of that fat finger is in a  
22 precinct in southwestern Jefferson County that is very large  
23 geographically, but has I want to say about a thousand people  
24 in it.

25 So you can't just eyeball it. You actually have to look

1 at the demographics. And that's why we presented evidence of  
2 demographics and why the state didn't.

3 The demographics show that you are still about  
4 two-and-a-half times as likely to be in District 7 than in  
5 District 6 if you are black, even though the overall population  
6 of Jefferson County is split roughly evenly.

7 So is it identical to the 1992? No. But is it very  
8 close? Yes. Because that's what the state told the Supreme  
9 Court. The state said that this district was largely the same.

10 The state described the plan, the 2021 plan to the Supreme  
11 Court as a least-change approach, not totally different the way  
12 that they're trying to spin it now without any evidence of the  
13 demographics, without any evidence of the -- of who is in those  
14 precincts that have been added and subtracted over time. They  
15 -- it is not evidence for a lawyer to put up two pictures side  
16 by side and say, see.

17 We have the demographic evidence. And the demographic  
18 evidence shows that these continue to be lines that divide  
19 people starkly by race the same as they were in 1992.

20 And I will just close by saying that we don't disagree  
21 that -- *Easley vs. Cromartie* holds that a district is not  
22 necessarily suspect just because it has ma -- you know, it's  
23 majority black. That's not why we claim this is suspect.

24 We claim it's suspect because it looks substantially  
25 similar to a district that Secretary Merrill himself admitted

1 was racially gerrymandered.

2       Something else Secretary Merrill said in earlier  
3 litigation was, how much racial gerrymandering is permissible?  
4 The answer is zero. It doesn't matter to the people of  
5 Jefferson County that the district has become more compact in  
6 the southern portion when it continues to separate them by race  
7 in the north.

8       Thank you.

9               JUDGE MARCUS: Thank you very much.

10       Thank you all, counsel.

11       Final issue I wanted to raise. We will ask you as we did  
12 yesterday to submit proposed findings of fact and conclusions  
13 of law on this preliminary injunction hearing, and we will set  
14 the deadline for simultaneous filings Monday the 21st of  
15 August, no later than the close of business.

16       We try to stagger it a little with regard to the findings  
17 and conclusions that we ask the parties to make with regard to  
18 yesterday's remedial hearing.

19       With that, this Court is in adjournment.

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21               (Whereupon, the above proceedings were concluded at  
22 11:26 a.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Christina K Decker

08-15-2023

Christina K. Decker, RMR, CRR  
Federal Official Court Reporter  
ACCR#: 255

Date