

**BOBBY SINGLETON, et al**

**vs**

**WES ALLEN, et al**

**SENATOR RODGER SMITHERMAN**

**July 29, 2024**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF ALABAMA  
3 SOUTHERN DIVISION  
4 CASE NUMBER 2:21-CV-1291-AMM  
5 BOBBY SINGLETON, et al.,  
6 Plaintiffs,  
7 v.  
8 WES ALLEN, in his official capacity  
9 as Alabama Secretary of State, et al.,  
10 Defendants.  
11 -----  
12 CASE NUMBER 2:21-CV-01530-AMM  
13 EVAN MILLIGAN, et al.,  
14 Plaintiffs,  
15 v.  
16 WES ALLEN, in his official capacity  
17 as Alabama Secretary of State, et al.,  
18 Defendants.  
19 -----  
20 CASE NUMBER 2:21-CV-01536-AMM  
21 MARCUS CASTER, et al.,  
22 Plaintiffs,  
23 v.  
24 WES ALLEN, in his official capacity  
25 as Alabama Secretary of State, et al.,  
26 Defendants.  
27  
28 DEPOSITION  
29 OF  
30 SENATOR RODGER SMITHERMAN  
31 July 29, 2024  
32 9:01 a.m.

1 S T I P U L A T I O N S  
2  
3 IT IS STIPULATED AND AGREED by and  
4 between the parties through their respective  
5 counsel that the deposition of SENATOR RODGER  
6 SMITHERMAN may be taken before Sabrina Lewis,  
7 Certified Court Reporter, Notary Public, State of  
8 Alabama at Large, at Whatley Kallis, 1000 Park  
9 Place Tower, Birmingham, Alabama, on July 29,  
10 2024, commencing at 9:01 a.m.  
11  
12 IT IS FURTHER STIPULATED AND AGREED that  
13 the signature to and reading of the deposition by  
14 the witness is not waived, the deposition to have  
15 the same force and effect as if full compliance  
16 had been had with all laws and rules of court  
17 relating to the taking of depositions.  
18  
19 IT IS FURTHER STIPULATED AND AGREED that  
20 it shall not be necessary for any objections to be  
21 made by counsel to any questions, except as to  
22 form or leading questions, and that counsel for  
23 the parties may make objections and assign grounds

1 The deposition of SENATOR RODGER  
2 SMITHERMAN was taken before Sabrina Lewis, CCR,  
3 July 29, 2024, commencing at 9:01 a.m., at Whatley  
4 Kallis, 1000 Park Place Tower, Birmingham,  
5 Alabama, pursuant to the stipulations set forth  
6 herein.  
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1 at the time of trial, or at the time said  
2 deposition is offered in evidence, or prior  
3 thereto.  
4  
5 IT IS FURTHER STIPULATED AND AGREED that  
6 notice of filing of the deposition by the  
7 Commissioner is waived.  
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23

<div>Page 5</div> <div> <p>1           A P P E A R A N C E S</p> <p>2</p> <p>3 APPEARING ON BEHALF OF THE SINGLETON PLAINTIFFS:</p> <p>4     James Uriah Blacksher, Esq.</p> <p>5     James U. Blacksher, Attorney</p> <p>6     825 Linwood Road</p> <p>7     Birmingham, Alabama 35222</p> <p>8     205-612-3752</p> <p>9     jublacksher@gmail.com</p> <p>10</p> <p>11    U.W. Clemon, Esq.</p> <p>12    U.W. Clemon, LLC</p> <p>13    2001 Park Place, Suite 1000</p> <p>14    Birmingham, Alabama 35222</p> <p>15    205-837-2898</p> <p>16    uwclemmon1@gmail.com</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> </div>	<div>Page 7</div> <div> <p>1           A P P E A R A N C E S (continued)</p> <p>2</p> <p>3 APPEARING ON BEHALF OF THE DEFENDANTS, STEVE</p> <p>4 LIVINGSTON AND CHRIS PRINGLE:</p> <p>5     Riley Katherine Lancaster, Esq.</p> <p>6     Balch &amp; Bingham</p> <p>7     1901 Sixth Avenue North, Suite 1500</p> <p>8     Birmingham, Alabama 35203</p> <p>9     205-226-8767</p> <p>10    rlancaster@balch.com</p> <p>11</p> <p>12 APPEARING ON BEHALF OF THE DEFENDANT, WES ALLEN</p> <p>13 (via videoconference)</p> <p>14    Misty S. Fairbanks Messick, Esq.</p> <p>15    Assistant Attorney General</p> <p>16    Office of the Attorney General</p> <p>17    State of Alabama</p> <p>18    501 Washington Avenue</p> <p>19    P.O. Box 300152</p> <p>20    Montgomery, Alabama 36130-0152</p> <p>21    334-242-7300</p> <p>22    misty.messick@alabamaag.gov</p> <p>23</p> </div>
<div>Page 6</div> <div> <p>1           A P P E A R A N C E S (continued)</p> <p>2</p> <p>3 APPEARING ON BEHALF OF THE MILLIGAN PLAINTIFFS:</p> <p>4 (via videoconference)</p> <p>5     Kathryn Carden Sadasivan, Esq.</p> <p>6     NAACP Legal Defense &amp; Educational Fund, Inc.</p> <p>7     40 Rector Street, Fifth Floor</p> <p>8     New York, New York 10006</p> <p>9     332-600-9546</p> <p>10    ksadasivan@naacpldf.org</p> <p>11</p> <p>12 APPEARING ON BEHALF OF THE DEFENDANTS, STEVE</p> <p>13 LIVINGSTON AND CHRIS PRINGLE:</p> <p>14    Dorman Walker, Esq.</p> <p>15    Balch &amp; Bingham LLP</p> <p>16    445 Dexter Avenue, Suite 8000</p> <p>17    P.O. Box 78 (36101)</p> <p>18    Montgomery, Alabama 36104</p> <p>19    334-269-3138</p> <p>20    dwalker@balch.com</p> <p>21</p> <p>22</p> <p>23</p> </div>	<div>Page 8</div> <div> <p>1           I N D E X</p> <p>2</p> <p>3           EXAMINATION INDEX</p> <p>4</p> <p>5 WITNESS: SENATOR RODGER SMITHERMAN           PAGE</p> <p>6 BY MR. WALKER                                       10</p> <p>7 BY MS. MESSICK                                       178</p> <p>8 BY MR. BLACKSHER                                   194</p> <p>9</p> <p>10           EXHIBIT INDEX</p> <p>11 Defendant's Exhibit                               PAGE</p> <p>12 1    Document 242-4, "Exhibit 4,                   77</p> <p>13           2021 Plan"</p> <p>14 2    Document 242-5, "Exhibit 5,                   101</p> <p>15           2023 Plan"</p> <p>16 3    Document 311, "Appendix A,                   125</p> <p>17           Remedial Plan 3"</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> </div>

<p style="text-align: right;">Page 9</p> <p>1 I, Sabrina Lewis, a Certified Court                  2 Reporter and a Notary Public for the State of                  3 Alabama at Large, acting as Commissioner, certify                  4 that, pursuant to the Alabama Rules of Civil                  5 Procedure and the foregoing stipulation of                  6 counsel, there came before me at Whatley Kallis,                  7 1000 Park Place Tower, Birmingham, Alabama, on                  8 July 29, 2024, commencing at 9:01 a.m., SENATOR                  9 RODGER SMITHERMAN, witness in the above cause, fo                  10 oral examination, whereupon the following                  11 proceedings were had:                  12 THE COURT REPORTER: Usual stipulations?                  13 MR. WALKER: Yes, please.                  14 And you have the option, Senator                  15 Smitherman, to read your deposition and maybe make                  16 any corrections that you think need to be made and                  17 sign it. Do you want to read and sign?                  18 SENATOR SMITHERMAN: Yes.                  19 MR. WALKER: Okay.                  20 (Witness sworn.)                  21 ///                  22 ///                  23 ///</p>	<p style="text-align: right;">Page 11</p> <p>1 are seeking from the court in this matter.                  2 You've been deposed a number of times,                  3 have you not?                  4 A. I've been deposed several times but not a                  5 tremendously large number of times.                  6 Q. Well, let's go over the rules, then, real                  7 quickly.                  8 This is not a normal conversation                  9 because our court reporter is taking everything                  10 down.                  11 I have a bad habit when I'm talking with                  12 someone of kind of jumping into the conversation                  13 at times. We can't do that in this conversation.                  14 We have to wait till each one finishes.                  15 And in particular, you also please                  16 answer my questions verbally, with a narrative                  17 answer, a yes, no, or narrative answer instead of                  18 shaking your head or something like that, because                  19 she can't take that down.                  20 A. All right.                  21 Q. If you don't understand the question that                  22 I've asked or if it's wrong in some way, if maybe                  23 I've summarized your testimony and you think maybe</p>
<p style="text-align: right;">Page 10</p> <p>1 SENATOR RODGER SMITHERMAN,                  2 duly sworn, was examined and testified as follows:                  3 EXAMINATION                  4 BY MR. WALKER:                  5 Q. Good morning, Senator Smitherman.                  6 A. Good morning, counsel.                  7 Q. Even though we know each other, let me                  8 introduce myself for the record. I'm Dorman                  9 Walker. And as you know, I represent the                  10 redistricting committee and the chairs of the                  11 committee who right now are Representative Pringle                  12 and Senator Livingston, who have intervened in                  13 this case as defendants.                  14 There is also another defendant,                  15 Secretary of State Wes Allen, who's being                  16 represented in this deposition by Misty Fairbanks,                  17 who you saw a moment ago, in the Attorney                  18 General's Office.                  19 This is our opportunity to understand                  20 your testimony in this matter and what you have to                  21 say against the Enacted Plan, the plan that the                  22 legislature passed in 2023, and in favor of                  23 whatever remedy that you and the other plaintiffs</p>	<p style="text-align: right;">Page 12</p> <p>1 I misquoted you or said something in the wrong                  2 way, let me know, because I don't want to ask a                  3 question that you don't understand or that you                  4 feel is in some way tricky. And I'll try to                  5 rephrase the way question, okay?                  6 A. Okay.                  7 Q. Similarly, as we go through the                  8 deposition, it's not uncommon that you might                  9 remember something or a thought may occur about                  10 something you could have said to an earlier                  11 question. So if you want to go back and change a                  12 question, if you say, you know, Dorman, I forgot                  13 something. I need to add something to the                  14 question I gave you a while ago -- answer, that's                  15 perfectly fine, okay?                  16 A. Okay.                  17 Q. Your counsel may object from time to                  18 time. He may say, "Object to the form." If he                  19 does that, he's really talking to me and giving me                  20 a sort of legal advice that he doesn't think I                  21 asked a very good question, but you can go ahead                  22 and answer the -- answer the question.                  23 If he thinks I'm getting into privileged</p>

1 material, which I don't intend to do, he'll  
 2 instruct you not to answer, and we'll take that up  
 3 at that time, okay?  
 4 A. Yes.  
 5 Q. Okay. We'll occasionally take breaks.  
 6 You're here for the morning, and I'm going to try  
 7 to keep this as short as I can. And what we  
 8 normally do is take breaks on the hour. If that's  
 9 good with you, that's what we'll do. If you need  
 10 to take a break before then, just let me know. As  
 11 long as there's not a question pending, we can  
 12 take a break.  
 13 A. I understand.  
 14 Q. Okay.  
 15 A. Thank you.  
 16 Q. Is there any reason, any medical reason  
 17 or medication you've taken or anything like that,  
 18 why you can't answer my questions today?  
 19 A. No.  
 20 Q. Okay. Thank you.  
 21 Would you state your name for the  
 22 record, please?  
 23 A. Rodger Smitherman.

Page 14

1 Q. And before your involvement in this case  
 2 as a plaintiff -- this is the Singleton case, of  
 3 course -- have you ever been involved in  
 4 litigation before?  
 5 A. Yes, I have.  
 6 Q. Can you tell me each one of those cases?  
 7 A. Well, the one that comes to my mind --  
 8 AND when you say litigation, are you referring to  
 9 the reapportionment or just general litigation at  
 10 all?  
 11 Q. Just any lawsuit, yes, sir. Including  
 12 reapportionment.  
 13 MR. BLACKSHER: As a party or as a  
 14 lawyer?  
 15 THE WITNESS: Lawyer.  
 16 Q. (BY MR. WALKER:) Well, that's a really  
 17 good point. Let's say first as a party.  
 18 A. Oh, we -- I recall the last case I think  
 19 we had regarding redistricting. And it may have  
 20 been addressing the senate and the House plans  
 21 where --  
 22 Q. Was that the Chestnut case or the ALBC  
 23 case?

Page 15

1 A. I'm not sure. I'm not sure.  
 2 Q. Okay. That's fine.  
 3 A. But I remember the three-judge panel,  
 4 which was Judge Pryor, Judge Thompson --  
 5 Q. That was -- that was ALBC.  
 6 A. -- Myron Thompson.  
 7 Q. The Alabama Legislative Black Caucus  
 8 case.  
 9 A. Yes. I was involved.  
 10 Q. That's right.  
 11 A. And I actually was a witness --  
 12 Q. Uh-huh.  
 13 A. -- in that case in the trial itself.  
 14 Q. You were.  
 15 Any other litigation that you can recall  
 16 being involved in?  
 17 A. You know, actually, probably a few more  
 18 now. I just can't recall them.  
 19 Q. I understand.  
 20 A. But there's probably one or two others.  
 21 Q. Do you recall any litigation that --  
 22 redistricting litigation that you've been involved  
 23 in as a lawyer?

Page 16

1 A. I can't recall any of them as a lawyer.  
 2 Q. Yes.  
 3 A. No, I can't recall any of them as a  
 4 lawyer.  
 5 Q. Have you ever been deposed before today?  
 6 You would have been deposed in ALBC. But that  
 7 would have been a long time ago.  
 8 A. I just can't recall really.  
 9 Q. Okay.  
 10 A. Yes.  
 11 Q. Do you recall, other than -- you've  
 12 testified that you were a witness in ALBC, and I  
 13 remember that. Do you recall any other time when  
 14 you testified in court?  
 15 A. I can't recall any -- I mean, just as a  
 16 plaintiff or defendant in a lawsuit or something?  
 17 Q. Uh-huh.  
 18 A. I can't -- I can't recall.  
 19 Q. That's fine. That's fine.  
 20 Can I ask you for your residential  
 21 address?  
 22 A. 224 16th Avenue Southwest, Birmingham,  
 23 ZIP code 35211.

1 Q. And how long have you lived at that  
 2 address, sir? Roughly?  
 3 A. Oh, it's roughly 20 years maybe.  
 4 Twenty-plus years.  
 5 Q. That will do.  
 6 A. Maybe a little longer.  
 7 Q. Do you have any plans to move in the  
 8 foreseeable future?  
 9 A. No. I don't have any plans.  
 10 Q. Let's talk about what you did to prepare  
 11 for your deposition today. Did you receive or  
 12 were you shown a notice for your deposition or  
 13 somehow told that you were going to be deposed  
 14 today?  
 15 A. Yeah, I received a copy of the notice of  
 16 deposition.  
 17 Q. Okay. When did you receive the notice of  
 18 deposition?  
 19 A. Well, the -- I received notice of the  
 20 deposition, not a copy of it, but I received -- I  
 21 knew I was going -- I was scheduled for this  
 22 deposition.  
 23 Q. Okay.

1 Mr. Blacksher?  
 2 A. Yes.  
 3 Q. Okay. Anyone else?  
 4 A. I had a conversation -- in that  
 5 conversation, I talked with co-counsel.  
 6 Q. Would that be Judge Clemon?  
 7 A. Yes.  
 8 Q. Okay. Was anybody else on that Zoom  
 9 call?  
 10 A. No. Not to my knowledge.  
 11 Q. I understand. And when was that Zoom  
 12 call?  
 13 A. I think it was -- I think it was  
 14 Thursday -- last -- this past Thursday.  
 15 Q. Last Thursday? And about how long did  
 16 that last, sir?  
 17 A. Thirty minutes to an hour maybe.  
 18 Q. Okay.  
 19 A. Somewhere in that range.  
 20 Q. During that conversation -- and I'm  
 21 not -- don't tell me what -- what you said to them  
 22 or what they said to you, but did you look at any  
 23 documents?

1 A. And I'm just -- I'm not sure the exact  
 2 date, but it was several -- you know, several  
 3 weeks ago.  
 4 Q. Who told you that you were going to be  
 5 deposed?  
 6 A. My counsel informed me.  
 7 Q. Was it in a telephone conversation or by  
 8 an email?  
 9 A. It was a telephone conversation.  
 10 Q. Okay. And which of your counsel informed  
 11 you?  
 12 A. Attorney Blacksher.  
 13 Q. Okay. Was anybody else on the line at  
 14 that call, do you know?  
 15 A. I don't -- I'm not for certain.  
 16 Q. Okay. So far as you know, it was you and  
 17 Attorney Blacksher?  
 18 A. Yeah.  
 19 Q. Okay. Did you meet with anyone in  
 20 preparation for your deposition?  
 21 A. Oh, I guess if you call Zoom. I talked  
 22 to my counsel.  
 23 Q. Okay. And would that again be

1 A. Yes, I looked at some, yes.  
 2 Q. Do you recall what those documents were?  
 3 A. Yes. I looked at the -- the maps.  
 4 Q. Okay.  
 5 A. And the -- for the districts for the way  
 6 that the court has them now. I think that's  
 7 right.  
 8 Q. Did you --  
 9 A. And I looked at once again my plan.  
 10 Q. Uh-huh.  
 11 A. The Smitherman Plan. And I looked at the  
 12 Singleton Plan.  
 13 Q. So did you look at the plan that the  
 14 legislature passed in 2021?  
 15 A. I did get a chance to look at it.  
 16 Q. Okay. And did you look at the plan that  
 17 the legislature passed in 2023?  
 18 A. No, wait a minute. Let me back out and  
 19 say that I didn't look at -- I don't recall  
 20 looking at 2021.  
 21 Q. Okay.  
 22 A. I looked at 2023.  
 23 Q. All right. Thank you. Did you look at



Page 21

1 the court-Ordered Plan?

2 A. Yes, I did.

3 Q. And you looked, I believe you said, at

4 the Singleton Plan and the Smitherman Plan?

5 A. I did.

6 Q. Any others?

7 A. No. Not that I recall.

8 Q. Were there any other documents that you

9 recall looking at?

10 A. Looked at the transcript of the last --

11 of the hearing that we had with the three-panel

12 judges.

13 Q. The last PI hearing?

14 A. Yes.

15 Q. Okay. Can I ask you, Senator Smitherman,

16 where you were raised?

17 A. I was raised in -- to give you a

18 reference point, I was raised in Montevallo.

19 Q. Okay. But really outside of Montevallo

20 or someplace?

21 A. Yeah, just a little bit outside.

22 Q. Okay.

23 A. It was in the county, but, you know, when

Page 22

1 you -- it was less -- I mean, gosh, you could step

2 across here, you were in the city, but you step

3 out here, you were in the county.

4 Q. I get -- I get it.

5 Did it have -- was it a crossroads with

6 a name or just -- just outside Montevallo?

7 A. No, it was a little community called

8 Almont.

9 Q. A-L-M-O-N-T?

10 A. Yes.

11 Q. And is that where you grew up to

12 adulthood or through high school?

13 A. Yes.

14 Q. Briefly go over your educational

15 background, if you will, starting when you

16 graduated from high school.

17 A. I graduated from Montevallo High School.

18 Q. Okay.

19 A. And then attended the University of

20 Montevallo, where I graduated also.

21 Q. What was your area of study?

22 A. Bachelor's of business administration

23 with a major concentration in management and

Page 23

1 marketing and insurance. It was somewhat of a --

2 somewhat of a minor concentration in economics.

3 And the second one, I was leaning toward

4 philosophy.

5 Q. Philosophy?

6 A. Leaning towards it.

7 Q. And your schooling after University of

8 Montevallo?

9 A. I went to Miles Law School.

10 Q. Okay. What year did you graduate from

11 University of Montevallo, if you can recall?

12 A. I think it was 1976.

13 Q. And what year did you graduate from

14 Miles?

15 A. I can't remember. It was either '86 or

16 '89, enter in there.

17 Q. All right.

18 A. I just can't remember.

19 Q. That's fine.

20 A. And it's sitting on my wall.

21 Q. Are you a member of the Alabama

22 legislature?

23 A. Yes, I am.

Page 24

1 Q. And would you tell us what district you

2 represent?

3 A. Senate District 18.

4 Q. And what geographic area does senate

5 District 18 cover?

6 A. Well, it's in parts of these areas. It

7 covers Hoover, Mountain Brook, Homewood, Irondale

8 Birmingham, and parts of the county like out at

9 Shannon and Ross Bridges and that part that's in

10 the county out there.

11 Q. So all within Jefferson County?

12 A. Yes.

13 Q. What's the partisan makeup of the

14 Jefferson County Delegation?

15 A. Which? The House?

16 Q. In the senate?

17 A. In the senate?

18 Q. Yes, sir.

19 A. You mean like -- oh --

20 Q. How many Democrats and how many

21 Republicans?

22 A. It's four Republicans and three

23 Democrats.

<p style="text-align: right;">Page 25</p> <p>1 Q. Are the Republicans all white?</p> <p>2 A. Yes.</p> <p>3 Q. Are the Democrats all black?</p> <p>4 A. Yes.</p> <p>5 Q. In addition to being a senator for SD-18,</p> <p>6 do you have any other employment?</p> <p>7 A. Yes. I'm an attorney, practicing</p> <p>8 attorney.</p> <p>9 Q. Are you solo or in a firm with some other</p> <p>10 people?</p> <p>11 A. I practice with my daughter.</p> <p>12 Q. Okay. What's the name of y'all's firm?</p> <p>13 A. Smitherman Law Offices, with an S on it.</p> <p>14 Q. Is that here in Birmingham?</p> <p>15 A. Yes, it is.</p> <p>16 Q. Are you active in any civic organizations</p> <p>17 or churches or professional groups or anything</p> <p>18 like that?</p> <p>19 A. In -- yes. I would say yes.</p> <p>20 Q. Okay.</p> <p>21 A. I mean, I'm just trying to think about</p> <p>22 the ones that I'm actually involved in as you were</p> <p>23 asking me the question, but I am, yes.</p>	<p style="text-align: right;">Page 27</p> <p>1 A. I have -- I have been from time to time.</p> <p>2 I --</p> <p>3 Q. Which one?</p> <p>4 A. I have been a member of ADC. I've been a</p> <p>5 member of that.</p> <p>6 Q. When did you cease to be a member of ADC?</p> <p>7 A. Well, it's -- I just hadn't renewed my</p> <p>8 membership.</p> <p>9 Q. Okay.</p> <p>10 A. You know, that's what I say -- had to say</p> <p>11 it to you that way. You know, I --</p> <p>12 Q. I understand?</p> <p>13 A. I participate, but I just hadn't renewed</p> <p>14 my membership.</p> <p>15 Q. All right. I'm sure they'll let you</p> <p>16 know. Are you active in the Jefferson County</p> <p>17 Executive Committee?</p> <p>18 A. Not --</p> <p>19 Q. Democratic Executive Committee. Excuse</p> <p>20 me.</p> <p>21 A. No, I'm not active in it. I go to the</p> <p>22 meetings from time to time, but I'm not active in</p> <p>23 it.</p>
<p style="text-align: right;">Page 26</p> <p>1 Q. Would you tell me what civic</p> <p>2 organizations, professional organizations,</p> <p>3 churches, et cetera you might be involved in?</p> <p>4 A. I'm involved, naturally, with our bar.</p> <p>5 Q. Uh-huh.</p> <p>6 A. I'm involved with the -- I'm involved</p> <p>7 with police athletics.</p> <p>8 Q. Police athletics?</p> <p>9 A. Uh-huh. Police athletics.</p> <p>10 Q. Okay.</p> <p>11 A. You know how you get a blank? I'm</p> <p>12 involved with so many things, I --</p> <p>13 Q. Are you a member of the Alabama</p> <p>14 Legislative Black Caucus?</p> <p>15 A. I am.</p> <p>16 Q. Okay.</p> <p>17 A. I am.</p> <p>18 Q. Are you a member of the Alabama</p> <p>19 Democratic Party?</p> <p>20 A. Yes, I am.</p> <p>21 Q. And are you a member of the ADC or the</p> <p>22 New South Coalition or any other group of that</p> <p>23 sort?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Have you ever served on the Jefferson</p> <p>2 County Democratic Executive Committee?</p> <p>3 A. No.</p> <p>4 Q. Do you regularly attend local Democratic</p> <p>5 party functions?</p> <p>6 A. I attend but not on a just regular,</p> <p>7 regular basis. But I do attend.</p> <p>8 Q. What kind of functions does the party</p> <p>9 have here in Jefferson County?</p> <p>10 A. Normally when I go there, it's just</p> <p>11 general meeting.</p> <p>12 Q. Of the Democratic Executive Committee?</p> <p>13 A. Yes, of the committee.</p> <p>14 Q. How frequently do they meet?</p> <p>15 A. I don't know.</p> <p>16 Q. Is it just ad hoc? Whenever they feel</p> <p>17 like they need to?</p> <p>18 A. I don't know.</p> <p>19 Q. Okay.</p> <p>20 A. I hadn't been to but just a few of them.</p> <p>21 Q. All right.</p> <p>22 Do you, sir, have any social media</p> <p>23 accounts? Facebook, TikTok, What's App,</p>



1 Instagram, whatever those things are?  
 2 A. I don't know if you call it an account.  
 3 I mean, just if you -- if you go on probably  
 4 Facebook, it will show you Smitherman. Won't show  
 5 you no picture though. And I don't -- I don't --  
 6 let me say it just like this. I don't communicate  
 7 on Facebook.  
 8 Q. Okay.  
 9 A. I don't do any -- or social media really.  
 10 Q. Yeah.  
 11 A. I don't communicate. And, you know, you  
 12 might see something somebody else say about you  
 13 That's more for me. I just kind of glance at it  
 14 or look at it.  
 15 Q. Well, you and I are alike. I do any  
 16 social media --  
 17 A. Uh-uh. Uh-uh. I don't do any --  
 18 Q. But do you ever post anything about  
 19 redistricting on social media?  
 20 A. No.  
 21 Q. Okay.  
 22 Senator Smitherman, would you tell me  
 23 what you understand this lawsuit is about?

1 A. Well, I know one of the issues also is  
 2 the whole county --  
 3 Q. Uh-huh.  
 4 A. -- constitutionality of preserving the  
 5 boundary lines of counties. And I understand  
 6 also -- and this may be akin to what I've already  
 7 said, but I understand that we're addressing  
 8 gerrymandering issues as well.  
 9 Q. Do you know anything about a Section 2  
 10 claim?  
 11 A. I know that we were involved somewhat,  
 12 but I'm not -- I don't know to the extent sitting  
 13 here.  
 14 Q. If I were --  
 15 A. I couldn't spit it out to you sitting  
 16 here.  
 17 Q. If I were to ask you questions about it,  
 18 you wouldn't be able to give me any answers of --  
 19 meaningful?  
 20 A. Well, I don't know about that.  
 21 Q. Okay.  
 22 A. But I know I couldn't give you one  
 23 knowing in advance.

1 A. I understand it's about, number one,  
 2 trying to secure for the minority voters and  
 3 voters in general two opportunity districts so  
 4 they have an opportunity, you know, to elect the  
 5 person of their choice.  
 6 Q. Uh-huh.  
 7 A. And that's what I understand this suit to  
 8 be basically about, trying to provide that  
 9 opportunity for them to have representation.  
 10 Q. When you -- when you -- thank you.  
 11 You said number one. Was there a two or  
 12 three or just that?  
 13 A. Oh, I also, having been a constitutional  
 14 law professor, I understand that there's, you  
 15 know, other issues there, voting rights issues.  
 16 Q. Okay.  
 17 A. And there's also constitutional issues.  
 18 Q. Well, do you understand that the  
 19 Smitherman plaintiffs have made a  
 20 constitutional -- a racial gerrymandering claim?  
 21 A. Yes.  
 22 Q. Okay. Do you know what other claims are  
 23 in the second amended complaint?

1 Q. Well, let me just make sure the record is  
 2 clear. Do you know anything about a Section 2  
 3 claim made by the Singleton plaintiffs?  
 4 A. I'm familiar that's it's a possibility  
 5 that that claim may be at issue, but I don't  
 6 know --  
 7 Q. Okay.  
 8 A. -- to the extent.  
 9 Q. Can I ask you how you got involved in  
 10 this lawsuit?  
 11 A. Well, I would like to say this -- but I'm  
 12 not sure 100 percent because I know we're here  
 13 where we are, but I've been involved with  
 14 reapportionments since I've been in the  
 15 legislature.  
 16 Q. Uh-huh.  
 17 A. I've been a member of the committee  
 18 probably longer than anybody in the Alabama  
 19 senate.  
 20 Q. So --  
 21 A. So I've been involved in just about every  
 22 one, you know, as a member of the committee. I've  
 23 been on the committee with just about every plan

<p style="text-align: right;">Page 33</p> <p>1 that we've been going through in this process</p> <p>2 since I've been in the legislature.</p> <p>3 Q. Of course, when you started, the</p> <p>4 Democrats were in the majority.</p> <p>5 A. That's correct.</p> <p>6 Q. And now they're not in the majority?</p> <p>7 A. That's correct.</p> <p>8 Q. How long have you been in the</p> <p>9 legislature?</p> <p>10 A. I'm working on -- when I go back, I think</p> <p>11 this is accurate, give or take a year, I think I'm</p> <p>12 working on 30 years.</p> <p>13 Q. Thirty years?</p> <p>14 A. When I go back in our next session.</p> <p>15 Q. So what was the -- did you start in the</p> <p>16 House or have you always been in the senate?</p> <p>17 A. Nope. I've always been in the senate.</p> <p>18 Q. Okay.</p> <p>19 A. I came off the streets and went in the</p> <p>20 senate.</p> <p>21 Q. That's probably unusual, is it, or do you</p> <p>22 know --</p> <p>23 A. It is, but it's good.</p>	<p style="text-align: right;">Page 35</p> <p>1 your district was drawn after the 2020 census?</p> <p>2 A. You mean this last time?</p> <p>3 Q. Yes, sir.</p> <p>4 A. The way it is drawn now?</p> <p>5 Q. Yes, sir.</p> <p>6 A. Not any -- not any major complaints in</p> <p>7 mind simply because, you know, our -- the district</p> <p>8 has been pretty much right on the border or a</p> <p>9 little less or a little more in voting age. And I</p> <p>10 stand corrected, because I know I'm under oath,</p> <p>11 but that's just my --</p> <p>12 Q. No, that's fine.</p> <p>13 A. -- guesstimation of that in terms of</p> <p>14 white voters.</p> <p>15 Q. Uh-huh.</p> <p>16 A. You know, it's either been 50-50 -- and</p> <p>17 I'm talking about voting age people.</p> <p>18 Q. Right.</p> <p>19 A. You know, the population hasn't been that</p> <p>20 big a difference. 52, 53, you know, in terms of</p> <p>21 that. But the voting age, it's been pretty much</p> <p>22 that way since I have been in the district most of</p> <p>23 the time.</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. Yeah.</p> <p>2 A. Because, you know, you just come with the</p> <p>3 same practicality any other citizen would into the</p> <p>4 process.</p> <p>5 Q. I like it.</p> <p>6 So have you always represented the same</p> <p>7 district?</p> <p>8 A. Yes, I have.</p> <p>9 Q. Has it always been numbered the same?</p> <p>10 A. Yes, it has.</p> <p>11 Q. Has it always been generally the same</p> <p>12 area as it is now?</p> <p>13 A. Not necessarily, no.</p> <p>14 Q. There have been some changes?</p> <p>15 A. Yes, there have been some changes.</p> <p>16 Q. And has it gotten bigger or smaller? In</p> <p>17 terms of geography?</p> <p>18 A. In geography? Probably -- I don't know.</p> <p>19 About the same. It's just shaped different ways.</p> <p>20 Q. Uh-huh.</p> <p>21 A. You know. So it's about the same, I</p> <p>22 would say. Just shaped a little differently.</p> <p>23 Q. Do you have any complaints over the way</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. So when did you first run for the senate?</p> <p>2 A. I think it was '94.</p> <p>3 Q. '94? And you think at that time, even at</p> <p>4 that time, the BVAP for your district was about</p> <p>5 52, 53?</p> <p>6 A. I'm not sure about that.</p> <p>7 Q. Has it come down over time as you recall?</p> <p>8 A. Well, it's just, you know, in redrawing</p> <p>9 the lines, it's been a lot of I guess what we</p> <p>10 would call crossover vote.</p> <p>11 Q. Uh-huh.</p> <p>12 A. You know, in some people. And that</p> <p>13 hadn't changed. In other words, you know, they</p> <p>14 been satisfied with me being -- having me be the</p> <p>15 person that's representing them.</p> <p>16 Q. Do you want to -- well, let me back up.</p> <p>17 When your current district was drawn</p> <p>18 after the 2020 election, did you meet with</p> <p>19 Mr. Randy Hinaman to talk about how your district</p> <p>20 might be redrawn?</p> <p>21 A. I met with -- I don't know his name. I</p> <p>22 don't know his name, but I met with someone at</p> <p>23 the -- on the reapportionment committee.</p>

<p style="text-align: right;">Page 37</p> <p>1 Q. Yeah.</p> <p>2 A. I didn't --</p> <p>3 Q. Do you know if he's the map drawer?</p> <p>4 A. I'm not sure.</p> <p>5 Q. You're not sure? Okay.</p> <p>6 A. Uh-uh. Because...I'm not sure.</p> <p>7 Q. And did he listen to you or explain to</p> <p>8 you what changes need to be made and listen to you</p> <p>9 about how you preferred for those changes to be</p> <p>10 made in terms of population?</p> <p>11 A. Well, he shared with me the way the</p> <p>12 districts were leaning with some of my other</p> <p>13 colleagues in the county.</p> <p>14 Q. Uh-huh. Uh-huh.</p> <p>15 A. And I -- from there, you know, my</p> <p>16 district was put together.</p> <p>17 Q. Were there some areas that you had to</p> <p>18 give up or -- from your district or -- well, let</p> <p>19 me just ask that question. Did you have to give</p> <p>20 up any part of your district to another district?</p> <p>21 A. I did. I gave up Bessemer.</p> <p>22 Q. Bessemer? How long had you represented</p> <p>23 Bessemer?</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. Okay.</p> <p>2 A. That was part of her old district.</p> <p>3 Q. Did you have a choice between areas that</p> <p>4 you could expand to that you went over with the</p> <p>5 map drawer and settled on the Ensley area, do you</p> <p>6 know? Do you recall?</p> <p>7 A. Not necessarily. Well, I'll put it this</p> <p>8 way. There were precincts. There were precincts</p> <p>9 that were open in those directions.</p> <p>10 Q. Uh-huh.</p> <p>11 A. And but I just accepted those precincts.</p> <p>12 Q. What percent do you think of your</p> <p>13 district stayed the same after your district was</p> <p>14 redrawn? Do you understand my question?</p> <p>15 A. I understand it. The majority of it did.</p> <p>16 To give you an exact percentage, I couldn't. But</p> <p>17 I would say the majority of it did.</p> <p>18 Q. What is the benefit to voters, to your</p> <p>19 constituents, of having somebody like you</p> <p>20 represent them for a long period of time as you</p> <p>21 have done?</p> <p>22 A. I think that it allows the voters to</p> <p>23 really get to know you.</p>
<p style="text-align: right;">Page 38</p> <p>1 A. I'm not sure. But I know it had been ten</p> <p>2 years, but I'm not sure it was any longer than.</p> <p>3 It may have been. Probably was, to be real. I</p> <p>4 just don't know the number of years that it was.</p> <p>5 Q. What were your feelings about giving up</p> <p>6 Bessemer?</p> <p>7 A. It gave them the opportunity to be whole.</p> <p>8 Q. Uh-huh.</p> <p>9 A. You know that -- in other words, they</p> <p>10 could be under one senator.</p> <p>11 Q. Uh-huh.</p> <p>12 A. That was the focal point. You know, they</p> <p>13 were having to have two senators. It just -- you</p> <p>14 know, they have a chance now to just be whole.</p> <p>15 Q. Did you acquire any geography from other</p> <p>16 districts?</p> <p>17 A. Yes. I acquired -- I'm trying to think</p> <p>18 of the direction that I told him. Acquired some</p> <p>19 of the Ensley area, out in that area. And I think</p> <p>20 at that time, Senator Coleman-Madison was</p> <p>21 representing them.</p> <p>22 Q. Senator who, sir?</p> <p>23 A. Coleman-Madison.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Uh-huh.</p> <p>2 A. You know. And I think that, in</p> <p>3 particular here in Jefferson County, you know, it</p> <p>4 allows voters to be comfortable with, lack of</p> <p>5 better word, crossing over.</p> <p>6 Q. Uh-huh.</p> <p>7 A. You know, the opportunity, in other</p> <p>8 words. That's what I'm saying, the opportunity.</p> <p>9 Because the longevity of the years that I've been</p> <p>10 in the district, as I told you, is about 50-50 or</p> <p>11 so, give or take a few points either way. Being</p> <p>12 able to represent them over this period of time,</p> <p>13 it surely -- it tells you that, you know, it's</p> <p>14 sort of like an opportunity district --</p> <p>15 Q. Uh-huh.</p> <p>16 A. -- you know, because you have blacks, you</p> <p>17 have whites, you have even Republicans who ma</p> <p>18 come over and vote, you know, if they're given an</p> <p>19 opportunity. So it's kind of like a model of</p> <p>20 what -- you know, back then, I didn't think of it</p> <p>21 that way, but as we move forward in opportunity</p> <p>22 districts --</p> <p>23 Q. Uh-huh.</p>

<p style="text-align: right;">Page 41</p> <p>1 A. -- I look at my breakdown of my          2 constituents and I look at the areas you've heard          3 me mention, Homewood, Hoover --          4 Q. Yes, sir.          5 A. -- Mountain Brook, and which those areas          6 are not predominantly African American at all, but          7 they would, you know, vote. And I think that          8 that's kind of a reflection of when you talk about          9 an opportunity district, that that's an          10 opportunity. And I think the longevity, the had a          11 chance to see, you know, what kind of legislator I          12 am. From there, they would support it -- they are          13 supportive.          14 Q. So would it be fair to say that the more          15 they can see of how you have represented the          16 district, the more comfortable they are in voting          17 for you?          18 A. Well, I think, naturally, when a person          19 can see your performance, then take can make an          20 individual judgment as to, you know, what they          21 think about it. And over the course of time,          22 they've had a chance to see that.          23 Q. When I asked you earlier what you</p>	<p style="text-align: right;">Page 43</p> <p>1 I guess, WVAP are maybe within the same range of          2 each other. Maybe the BVAP is about 52, and I          3 guess the white voting age population is maybe 48          4 or a little space in there for Hispanics or          5 something like that? Is that generally your          6 district?          7 A. I would say that the percentage that          8 makes up minorities includes those Hispanics.          9 Q. Okay. When you say that?          10 A. I would think that that would be the          11 case.          12 Q. So about 52 percent --          13 A. Now, I could be corrected --          14 Q. No --          15 A. -- but I think that's the case.          16 Q. Well, can we agree that --          17 MR. BLACKSHER: Y'all are jumping in          18 again.          19 MR. WALKER: I'm sorry. I told you I was          20 going to do that, and I did. My apology.          21 Q. Can we agree that the statistics          22 maintained by the reapportionment office would be          23 correct on that point?</p>
<p style="text-align: right;">Page 42</p> <p>1 understood this lawsuit was about, you said trying          2 to secure for minority voters and voters in          3 general an opportunity district. And that may not          4 be exactly what you said, but I think that's          5 generally what you said.          6 When you said minority voters, were you          7 preferring principally to black voters?          8 MR. BLACKSHER: Object to form.          9 Go ahead.          10 A. Well, I was referring to in general          11 minority voters.          12 Q. (BY MR. WALKER:) Okay.          13 A. But in particular, black voters.          14 Q. Okay. Is there a significant or          15 meaningful Hispanic population in your district?          16 A. It's -- it's a lot -- it's a lot of them.          17 You know, I won't say, you know, to a large,          18 larger degree.          19 Q. Uh-huh.          20 A. But there is a, you know, good number of          21 Hispanic voters in this district.          22 Q. What's the -- scratch that.          23 So you've said that your BVAP and your,</p>	<p style="text-align: right;">Page 44</p> <p>1 A. I -- I would have to --          2 Q. Yeah.          3 A. -- agree until I can see otherwise.          4 Q. And just to make clear -- I think you          5 mentioned this. You've been -- I first started          6 working for the reapportionment committee after          7 the 1990 census, and you've been on it pretty much          8 the same time. Is that correct?          9 A. That's correct.          10 Q. All throughout.          11 A. Now, that's starting in '94 and '95, now.          12 I wasn't there in '90.          13 Q. I was surprised to see -- maybe in the          14 last year or so, I was in Donna's office. And,          15 for some reason, she had that contract from '90          16 out.          17 A. Yeah.          18 Q. And Dave Boyd and I were hired to          19 represent the committee. A long time ago.          20 Let's go back to the question I asked          21 you a while ago, how did you get involved in this          22 lawsuit. Who did you talk to about getting          23 involved in the lawsuit?</p>



<p style="text-align: right;">Page 45</p> <p>1 A. I don't recall talking to anyone but          2 myself. You know, I'm not saying that I didn't          3 have, you know, just general conversations with          4 someone that was concerned about us having an          5 opportunity to have more than one district or an          6 opportunity to elect someone from more than one          7 district. I'm sure I've had some conversations.          8 I can't recall specifically --          9 Q. Okay.          10 A. -- with that person on that date. But          11 it's a concern of mine.          12 Q. Well, I understand --          13 A. It's a concern of constituents. You          14 know, I represent this general area, you know, up          15 here.          16 Q. Right.          17 A. And we have constituents up here who are          18 very concerned about those issues.          19 Q. Understand that.          20 So you had this concern. And it's kind          21 of a concern that you've always had?          22 A. Yes.          23 Q. But what was the next step? Something</p>	<p style="text-align: right;">Page 47</p> <p>1 getting involved in this lawsuit?          2 A. Well, I mean, after getting -- moving          3 forward, naturally, we have counsel.          4 Q. Uh-huh. Yeah.          5 A. You know. But not any deciding to get          6 into it. You know --          7 Q. Yeah.          8 A. -- I didn't have -- I don't recall any          9 conversations with -- that I did.          10 Q. Senator Smitherman, were the          11 conversations that you had with the Senate Black          12 Caucus or the Alabama Legislative Black Caucus,          13 was there an attorney present for those          14 conversations? Are they privileged or not?          15 A. I don't recall having an attorney at the          16 Senate Black Caucus meetings.          17 Q. Okay. Can you then recall anything that          18 was discussed or said at the senate Caucus meeting          19 at which this lawsuit was discussed?          20 A. Well, I can just share with you that          21 the -- it was a general feeling that the whole          22 counties would be the best approach and keeping          23 the counties together, all together, keep them</p>
<p style="text-align: right;">Page 46</p> <p>1 had to happen to get a group of plaintiffs          2 together to get a lawsuit written and everything.          3 Maybe you contacted Mr. Blacksher or something. I          4 mean, I'm just making stuff up. I don't know.          5 What happened next?          6 A. I can't recall the actual next step --          7 Q. Yeah.          8 A. -- or anything like that. I know we had          9 conversations in our Caucus meetings, you know,          10 regarding representation and trying to, you know,          11 see what we need to do to move forward to provide          12 that opportunity district.          13 Q. And when you say Caucus meeting, is that          14 the Alabama Legislative Black Caucus?          15 A. Yes. I think in particular, we had          16 conversations with the senate Black Caucus.          17 Q. Okay.          18 A. And then I think that ultimately, we did          19 have some conversations at the Legislative Black          20 Caucus meetings. But primarily, my conversations          21 started with the senate Black Caucus.          22 Q. Do you recall anyone else you talked to          23 or anyone that you talked to in the process of</p>	<p style="text-align: right;">Page 48</p> <p>1 whole as possible.          2 Q. Uh-huh.          3 A. And that because of the performance of          4 Jefferson County as it relates to the electing of          5 judges, of course, as I shared with you my          6 district, you know, the makeup of it, and that,          7 number one, it should be kept whole but also that          8 it was the best area to have an opportunity          9 district. And so those are the kind of          10 conversations that, you know, that took place.          11 Q. Now, it seems like y'all took a -- well,          12 y'all did -- took a different approach than the          13 Milligan and the Caster plaintiffs have taken in          14 that what you're proposing, if I understand the          15 complaint correctly, is that the court create two          16 opportunity districts in which the BVAP is less          17 than 50 percent. Is that correct?          18 MR. BLACKSHER: Object to form.          19 A. Yes, those two plans.          20 Q. (BY MR. WALKER:) Uh-huh.          21 A. I mean, those two opportunity districts.          22 Q. Right.          23 A. One of them was right at close to 50.</p>



<p style="text-align: right;">Page 49</p> <p>1 Q. Right.</p> <p>2 A. And the other was, of course, below 50.</p> <p>3 Q. Was there any conversation that you can</p> <p>4 recall about the wisdom or the advisability of</p> <p>5 switching from one, I think we can say, more or</p> <p>6 less guaranteed black Congressional district in</p> <p>7 favor of two less than 50 percent crossover</p> <p>8 districts that -- where the performance was you</p> <p>9 had to pull, haul, and trade in order to make that</p> <p>10 work to elect the black candidate of choice? Do</p> <p>11 you understand my question?</p> <p>12 A. Would you say that again?</p> <p>13 Q. Yeah, I kind of convoluted that question.</p> <p>14 What we had coming into the 2020 census</p> <p>15 was one black district, CD-7; right?</p> <p>16 A. That's correct.</p> <p>17 Q. And that has always been above 50 percent</p> <p>18 BVAP; correct?</p> <p>19 A. Correct.</p> <p>20 Q. So it was I think everybody has tended to</p> <p>21 look at that, particularly with the record of the</p> <p>22 incumbent now, as a safe black district. Would</p> <p>23 you agree with me on that?</p>	<p style="text-align: right;">Page 51</p> <p>1 this county. You know, as I said earlier, you</p> <p>2 know, the election of our judges, election of --</p> <p>3 you know, me being in the senate.</p> <p>4 Q. Right.</p> <p>5 A. That the functionality of this district</p> <p>6 is solid to the point where an opportunity would</p> <p>7 exist for an African American to have a chance to</p> <p>8 be elected in this particular area.</p> <p>9 That was one of the things that</p> <p>10 concerned me about the whole process is that the</p> <p>11 functionality reports and what they showed --</p> <p>12 Q. Uh-huh.</p> <p>13 A. -- in terms of actually having an</p> <p>14 opportunity. Not just numbers but the</p> <p>15 performance.</p> <p>16 Q. Right.</p> <p>17 A. Over like a 10- or 12-year period. And</p> <p>18 we had a chance to look at those performances, y</p> <p>19 know, and this area just clearly outperformed any</p> <p>20 other area surrounding it.</p> <p>21 Although I will say this, that I</p> <p>22 support, you know, the court's plan now because</p> <p>23 it's an opportunity district.</p>
<p style="text-align: right;">Page 50</p> <p>1 A. Say that -- about the safe black</p> <p>2 district.</p> <p>3 Q. Yeah, that we've tended to view his --</p> <p>4 CD-7 as a safe black district. It's been a</p> <p>5 district that has reliably elected the black</p> <p>6 candidate over the last 20, 30 years?</p> <p>7 A. It has reliably elected a black</p> <p>8 candidate. You're correct about that.</p> <p>9 Q. Yeah. And now you're asking the court to</p> <p>10 create, instead of one reliable black district,</p> <p>11 two opportunity districts that, I mean, would you</p> <p>12 agree with me that it's not guaranteed that the</p> <p>13 minority can elect its candidate of choice?</p> <p>14 MR. BLACKSHER: Object to form.</p> <p>15 A. Well, I would think that in those</p> <p>16 districts that they could. And I'll tell you in</p> <p>17 part because of the functionality reports.</p> <p>18 Q. (BY MR. WALKER:) Uh-huh.</p> <p>19 A. Or the functionality report of this area</p> <p>20 and -- you know, Jefferson County --</p> <p>21 Q. Yeah.</p> <p>22 A. -- and this area in terms of the second</p> <p>23 opportunity district has demonstrated itself in</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Uh-huh.</p> <p>2 A. And -- but I just think that the better</p> <p>3 opportunity district is on this end. But I do</p> <p>4 support their plan regarding opportunity</p> <p>5 districts.</p> <p>6 Q. I understand that. And I think it's a</p> <p>7 given that y'all concluded that the opportunity</p> <p>8 districts would work because you went forward with</p> <p>9 promoting that plan.</p> <p>10 A. Yes.</p> <p>11 Q. I was asking a question that was a little</p> <p>12 bit different from that.</p> <p>13 A. Oh, I'm sorry.</p> <p>14 Q. When the idea of the opportunity</p> <p>15 districts was first promoted, first came up for</p> <p>16 discussion, was there any back-and-forth about</p> <p>17 well, we got a bird in the hand now in CD-7, and</p> <p>18 you're asking us to go to two districts that may</p> <p>19 or may not perform?</p> <p>20 I mean, notwithstanding the performance</p> <p>21 reports that you saw, would you agree with me that</p> <p>22 there is a possibility that the two opportunity</p> <p>23 districts that -- or at least one of the two</p>

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1 opportunity districts that are in the  
 2 court-Ordered Plan or that were in your plan could  
 3 elect a white candidate instead of a black  
 4 candidate?  
 5 MR. BLACKSHER: Object to form.  
 6 A. Well, it's no written guarantee --  
 7 Q. (BY MR. WALKER:) Right.  
 8 A. -- in any race --  
 9 Q. Right.  
 10 A. -- that this person or this party are not  
 11 as assured, you know -- I mean, I'm getting  
 12 elected and there have been districts that -- you  
 13 know, in other kind of races. I'll just take one  
 14 area that I think about is the city of Oakman.  
 15 Q. Yeah.  
 16 A. I mean, you know, gosh, you know, they  
 17 elected a white male as their mayor. So it's --  
 18 even though it's predominantly, predominantly  
 19 African American. But I do think those  
 20 opportunity districts provide a very good  
 21 opportunity.  
 22 And one of the other things is that the  
 23 growing population in the state, it was a concern

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1 that you had a disenfranchisement of African  
 2 American voters where they didn't have an  
 3 opportunity to elect a candidate of their choice.  
 4 Q. Uh-huh.  
 5 A. So that's -- you know, that was one of  
 6 the concerns as well in our conversation, that  
 7 they should have an opportunity to do that and the  
 8 opportunity district will provide it.  
 9 Because, you know, if you -- even though  
 10 we said 7 was a safe district -- you made that  
 11 reference. But it's -- in all actuality, you  
 12 know, it was -- it was stacking.  
 13 Q. Uh-huh.  
 14 A. You're talking about 65 and 70 percent  
 15 African Americans in a district. And don't hold  
 16 me to the exact figure of 65 or 70. But a  
 17 large --  
 18 Q. Uh-huh.  
 19 A. -- percentage of African Americans just  
 20 put in that district. And that was a -- that's a  
 21 concern.  
 22 Q. Uh-huh.  
 23 A. You know, the other concern is that, of

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1 course, you know, that's why we -- I supported the  
 2 whole county plan is simply the fact that, you  
 3 know, you go in and kind of split the county  
 4 across the middle and, you know, you  
 5 disenfranchise two sets of people.  
 6 Q. Uh-huh.  
 7 A. You send the black people down here --  
 8 not "you," but I'm --  
 9 Q. Yeah.  
 10 A. -- just saying you send the black people  
 11 down to 7 and then you send the white people over  
 12 here to 6.  
 13 Q. Uh-huh.  
 14 A. You know. And, of course, you know, this  
 15 district then, that's a concern because you have  
 16 communities of interest all through and out this  
 17 county, that it's not isolated where you should  
 18 separate --  
 19 Q. Uh-huh.  
 20 A. -- the county like that, the whole county  
 21 as a whole.  
 22 I think we saw that in the -- I'm not --  
 23 I don't -- I'm not getting the name, but when they

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1 sent the money to the state to help out. I  
 2 forgot --  
 3 Q. The COVID?  
 4 A. Yeah, it may have been the COVID or it  
 5 may have been other money. They sent Jefferson  
 6 County money direct to Jefferson County.  
 7 Q. Uh-huh.  
 8 A. Not through the state. It was the only  
 9 county in the state that received its money  
 10 straight to it because of the size of the county  
 11 and the multitude of, you know, people that it has  
 12 to help --  
 13 Q. Uh-huh.  
 14 A. -- that they sent it straight to them.  
 15 So that's what I meant by splitting it.  
 16 You know, as a whole as a county, we  
 17 intertwine with each other.  
 18 Q. Yeah.  
 19 A. You know, and, you know, work very well  
 20 together. So it kind of does us a disservice to  
 21 split us up like that.  
 22 Q. Can it work in the county's advantage to  
 23 have two members of Congress representing it

<p style="text-align: right;">Page 57</p> <p>1 instead of one? Has Terry Sewell, who is the                  2 representative from CD-7, long-term representative                  3 from CD-7, has she consistently worked with the                  4 white representative representing the other parts                  5 of Jefferson County?                  6 A. I don't know.                  7 Q. You don't know?                  8 A. But I will say that it's not to our                  9 advantage at all. I mean, simply because we are                  10 in 7. 7 goes all the way down in the Black Belt.                  11 Q. Uh-huh.                  12 A. Whatever resources that are provided for                  13 this county from that perspective has to be                  14 distributed throughout from this part of Jefferson                  15 County all the way down to the Black Belt. We                  16 have sometimes rural people have different needs                  17 and concerns than people in the urban area. And                  18 so you can understand what I mean by that. If we                  19 had the whole county and all the resources came to                  20 this county --                  21 Q. Uh-huh.                  22 A. -- then the multitude of issues in this                  23 county itself could be addressed. But right now,</p>	<p style="text-align: right;">Page 59</p> <p>1 A. Oh, you know, quality of their water.                  2 Q. Okay.                  3 A. Quality of sewage; food deserts; you                  4 know, the roads; schools. Those kind of things.                  5 Q. And those are areas in which rural people                  6 have maybe different needs and concerns than the                  7 people who live in Jefferson County?                  8 A. Well, I would say yeah simply because of                  9 you take our education, our formula dealing with                  10 the millage. You know 10 mills in Hale County is                  11 not 10 mills in Mountain Brook. That's what I                  12 meant. It's just -- so it's going to create a                  13 bigger need for them. So if we have education                  14 dollars, for them to -- just to get baseline, it's                  15 going to take more of the dollars for that and                  16 it's going to take dollars away from us up here,                  17 although we have the largest population.                  18 Q. Do you know any of the other Singleton                  19 plaintiffs? I'm going to say you know Senator                  20 Rodger Singleton?                  21 A. Senator who?                  22 Q. Singleton.                  23 A. I know Senator Singleton, yes.</p>
<p style="text-align: right;">Page 58</p> <p>1 we're having to share those resources with                  2 everybody in the Black Belt. And then on the                  3 other end of the county, we've had to share those                  4 resources with everybody in Shelby County and, you                  5 know, all of the makeup of 6. So it's at a big                  6 disadvantage for us here, you know, in terms of                  7 those resources because this is a county -- don't                  8 hold me to the figure --                  9 Q. Uh-huh.                  10 A. -- but this is a county of about seven                  11 hundred, eight hundred thousand people, you know,                  12 in just one county.                  13 Q. Yes, sir.                  14 A. And those resources, as I said earlier,                  15 are being split up among all these other counties.                  16 Instead of us getting them all, we're just getting                  17 a little fraction based on how many other counties                  18 are getting, sharing --                  19 Q. And you mentioned that rural people have                  20 different needs and concerns or some different                  21 needs and concerns from people in an urban county                  22 like Jefferson County, if I understood you                  23 correctly. What would be some examples of that?</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. You know him. Do you know Eddie                  2 Billingsley?                  3 A. I've met Eddie Billingsley.                  4 Q. Just that though?                  5 A. Yeah. I've met him. I can't recall when                  6 or how long it was.                  7 Q. Was it in connection with this lawsuit?                  8 Or some other time?                  9 A. No.                  10 Q. Is he involved in politics in Jefferson                  11 County?                  12 A. I don't know.                  13 Q. Okay. What about Leonette Slay? Have                  14 you met Ms. Slay?                  15 A. Not to recall. You know, if she walked                  16 in here, I probably wouldn't know her to look.                  17 But after talking, I may say "Oh, yeah, I met her                  18 somewhere, yeah," you know, that kind of thing.                  19 Q. Oh, yeah. Well, you're a politician.                  20 You meet lots of people.                  21 What about the Reverend Darryl Walker?                  22 Do you know him?                  23 A. I know -- I've heard his name and know of</p>

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1 him, but I don't -- we don't have a personal  
 2 relationship or anything like that.  
 3 Q. What about the Reverend Andrew Walker?  
 4 A. The same.  
 5 Q. Same? Okay.  
 6 Did you recruit any of the plaintiffs  
 7 for this litigation?  
 8 A. No.  
 9 Q. Okay. Did you see the original complaint  
 10 that was filed in September of '21? Do you recall  
 11 if you saw it or not?  
 12 A. I can't recall.  
 13 Q. Okay. Do you recall if you saw the first  
 14 amended complaint that was filed I think later  
 15 that -- in like November maybe?  
 16 A. I probably did, but I just can't recall.  
 17 Q. Do you recall if you have seen the second  
 18 amended complaint, the operative version -- the  
 19 operative complaint in this case?  
 20 A. I'm sure I did.  
 21 Q. Do you recall --  
 22 A. But I just don't recall when.  
 23 Q. Do you recall anything about it?

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1 A. Not by memory.  
 2 Q. Okay.  
 3 A. Not by memory. No, I didn't seek to  
 4 memorize anything.  
 5 Q. I understand.  
 6 Do you know if you saw it before -- when  
 7 I say "it," I'm referring now to the second  
 8 amended complaint. Do you know if you saw the  
 9 second amended complaint before it was filed?  
 10 A. I'm sure I did.  
 11 Q. Okay.  
 12 A. I'm sure I did.  
 13 Q. Have you read any of the expert reports  
 14 submitted in this case?  
 15 A. I remember having some just conversations  
 16 about it. And I may have had a chance to look at  
 17 it. I -- look at the brief, the first part of it  
 18 or something.  
 19 Q. Uh-huh.  
 20 A. I just can't recall whether I have or  
 21 have not.  
 22 Q. And I assume from that that if I were to  
 23 ask you what you recall about any of those expert

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1 reports, you don't recall that either?  
 2 A. No. I couldn't give you --  
 3 Q. Okay.  
 4 A. You know. Because I didn't reduce it to  
 5 memory, you know. You can understand.  
 6 Q. I know.  
 7 You mentioned some performance reports  
 8 that you looked at. Was that before you became a  
 9 plaintiff in this lawsuit or when was it, if you  
 10 recall?  
 11 A. I can't recall. I can't recall. I  
 12 just -- I know that I, during the course of the  
 13 bill and conversations with the bill, I looked at  
 14 several of those.  
 15 Q. Do you recall --  
 16 A. And requested some other ones that I  
 17 didn't receive from the committee.  
 18 Q. Do you recall looking at any polarization  
 19 studies, racial polarization studies, in  
 20 connection with either the redistricting after the  
 21 2020 census or this lawsuit?  
 22 A. I can't recall.  
 23 Q. Okay. Do you recall -- I think you've

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1 covered that.  
 2 Have you read any of the court opinions  
 3 in this case?  
 4 A. The most recent one. The last one. I  
 5 read over it.  
 6 Q. Denying the motion to dismiss?  
 7 A. No, just the -- I think what I recall is  
 8 the instructions that the court gave the -- is it  
 9 the standing master? That actually approves --  
 10 Q. The special master?  
 11 A. Yeah.  
 12 Q. Okay. That one --  
 13 A. Yeah, yeah. I just kind of remember  
 14 reading over it, but I don't recall, you know, by  
 15 memory it but I remember reading over it. Because  
 16 one of the concerns that I had was the fact that  
 17 there were numbers being presented, but how did  
 18 stack up in the functionality study of actually an  
 19 opportunity for folks to get elected? Not just  
 20 numbers but the study itself, that would have  
 21 shown performances. And I do recall that the best  
 22 performance, as I said earlier, was up here in  
 23 Jefferson County in terms of opportunity to be



<p style="text-align: right;">Page 65</p> <p>1 able to provide --</p> <p>2 Q. Can you describe the performance reports</p> <p>3 that you saw? How did they measure performance of</p> <p>4 the minority population?</p> <p>5 A. Well, it wasn't so much the performance</p> <p>6 that I noticed of the majority -- that I noticed</p> <p>7 of the -- you said majority?</p> <p>8 Q. I said minority.</p> <p>9 A. Minority.</p> <p>10 Q. Yes.</p> <p>11 A. Minority population. What I wondered --</p> <p>12 noticed is that in a district where it was not</p> <p>13 predominantly majority African American, whether</p> <p>14 or not there would be voters who would be, lack of</p> <p>15 better word, independent voters --</p> <p>16 Q. Uh-huh.</p> <p>17 A. -- who would be willing to, you know,</p> <p>18 vote for whatever candidate that was the best</p> <p>19 candidate. And looking at those performances, as</p> <p>20 I said earlier, it clearly showed here that these</p> <p>21 citizens were very open-minded and --</p> <p>22 Q. Do you recall the methodology of the</p> <p>23 report to reach that conclusion?</p>	<p style="text-align: right;">Page 67</p> <p>1 would either want the court to stay with the</p> <p>2 district that it has or accept the district that</p> <p>3 was provided at the Singleton district -- the</p> <p>4 Singleton Plan.</p> <p>5 Q. In short, did you say you would want the</p> <p>6 court either to stay with the Special Master Plan</p> <p>7 Number 3 that the court ordered into effect or</p> <p>8 adopt the Singleton Plan?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And that would be the Singleton Plan with</p> <p>11 the zeroed out deviations?</p> <p>12 A. Yes, with the Jefferson County being</p> <p>13 whole as a Congressional district.</p> <p>14 Q. Okay. Do you recall -- let me start</p> <p>15 over.</p> <p>16 Senator Smitherman, have you ever seen</p> <p>17 any of the population estimates that are put out</p> <p>18 by the census bureau in the period of time between</p> <p>19 the decennial censuses?</p> <p>20 A. Explain that to me. Please.</p> <p>21 Q. Okay. You know, every ten years we get</p> <p>22 the census.</p> <p>23 A. That's correct.</p>
<p style="text-align: right;">Page 66</p> <p>1 A. Looking at past elections, the</p> <p>2 performance in those elections.</p> <p>3 Q. In other words, did the reports that</p> <p>4 you're talking about look at how voters had voted</p> <p>5 in the geographic area covered by a proposed</p> <p>6 Congressional district?</p> <p>7 A. I think you're right.</p> <p>8 Q. Okay. Over a series of different</p> <p>9 elections?</p> <p>10 A. Yeah. And times.</p> <p>11 Q. And times. Yes. Okay.</p> <p>12 And I probably asked you this, but let</p> <p>13 me ask you again to make sure I -- so I can move</p> <p>14 on. Do you recall who authored those reports?</p> <p>15 A. Not authored them. I don't.</p> <p>16 Q. Okay.</p> <p>17 A. You know, I don't recall that. No, I</p> <p>18 don't recall who actually authored them, no.</p> <p>19 Q. If, after a trial of the Singleton</p> <p>20 complaint, y'all were to prevail, what do you want</p> <p>21 the court to do?</p> <p>22 A. Number one, I want the court to ensure</p> <p>23 that we would have two opportunity districts. I</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. And that gives us the official count of</p> <p>2 how many people are in Hale County and Jefferson</p> <p>3 County and all the counties in Alabama.</p> <p>4 A. That's correct.</p> <p>5 Q. And so we got that. And then in the time</p> <p>6 between that, of course, there are people moving</p> <p>7 around all the time. And the census bureau comes</p> <p>8 out with estimates. Have you ever looked at any</p> <p>9 of those estimates to your recollection?</p> <p>10 A. No, I can't recall looking at any of</p> <p>11 those estimates.</p> <p>12 Q. Do you know generally what has happened</p> <p>13 to the population of the counties in the Black</p> <p>14 Belt?</p> <p>15 Well, let me ask that question better.</p> <p>16 Do you know generally what happened to</p> <p>17 the population of the counties in the Black Belt</p> <p>18 from the 2010 census to the 2020 census?</p> <p>19 A. No, I don't.</p> <p>20 Q. Do you know whether the census showed</p> <p>21 that most of those counties had suffered decline</p> <p>22 in population?</p> <p>23 A. I didn't see any report that showed that.</p>



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1 Q. You don't know that? I'm sorry. Did I  
 2 cut you out?  
 3 A. I'm just not familiar with any report.  
 4 Q. Do you know whether the estimates that  
 5 the census bureau has released since the 2020  
 6 census data were released, if those estimates also  
 7 show that most of the counties in the Black Belt  
 8 have continued to lose population?  
 9 A. Say that again?  
 10 Q. Sure.  
 11 A. Not the last part. The first part. Say  
 12 that again?  
 13 Q. Do you know whether the estimates of  
 14 Alabama county population published by the census  
 15 bureau after the 2020 census data became available  
 16 show that most counties in the Black Belt are  
 17 continuing to lose population?  
 18 A. I haven't seen that report.  
 19 Q. Do you have any sense yourself about  
 20 population loss or gain in the counties in the  
 21 Black Belt?  
 22 A. No, I'm not -- I'm not close enough, you  
 23 know, in my day-to-day activities or in my

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1 activities going in that area to be observant --  
 2 you know, observant of whether that does or does  
 3 not take place from that perspective.  
 4 Q. And when I say Black Belt, let's make  
 5 sure we're on the same sheet of music. I'm  
 6 referring to these counties: Barbour, Bullock,  
 7 Butler, Choctaw, Crenshaw, Dallas, Greene, Hale,  
 8 Lowndes, Macon, Marengo, Montgomery, Perry,  
 9 Pickens, Pike, Russell, Sumter, and Wilcox. Is  
 10 that what you understand to be the Black Belt?  
 11 A. Pretty much, yes.  
 12 Q. Okay. How often do you go to any of  
 13 those counties? You come to Montgomery, I guess,  
 14 periodically for legislative stuff.  
 15 A. That's true.  
 16 Q. Do you come to Montgomery for any other  
 17 reason, sir?  
 18 A. Not unless it's -- you know, the Alabama  
 19 High School Athletic Association has activities or  
 20 something of that nature. But other than that, I  
 21 don't -- I don't -- you know, I'm down there so  
 22 much in the legislature that I stay back a lot of  
 23 times on this end, you know.

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1 Q. What I've --  
 2 A. But I've been to, you know, Selma a  
 3 couple times, you know.  
 4 Q. Well, we'll go over that.  
 5 What's your connection to the Alabama  
 6 High School Athletic Association?  
 7 A. I'm a coach.  
 8 Q. Oh, I didn't know that.  
 9 A. I coach basketball at Ramsay High School  
 10 Boy's basketball. As I tell people, I'm a  
 11 card-carrying coach. I'm not just somebody who  
 12 volunteers sitting over there at the --  
 13 Q. You're the real thing?  
 14 A. Yeah, I'm the real thing.  
 15 Q. Are you still coaching?  
 16 A. Still coaching.  
 17 Q. How long you been coaching?  
 18 A. I'm going to the school this evening when  
 19 I get off from work.  
 20 Q. Oh, okay. All right.  
 21 A. I been coaching -- coaching itself.  
 22 Q. Yes, sir.  
 23 A. Not at Ramsay but coaching --

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1 Q. Both?  
 2 A. Well, this is going on my 44th straight  
 3 year coaching at some level.  
 4 Q. Uh-huh.  
 5 A. And I've been coaching at Ramsay High  
 6 School since 1985.  
 7 Q. I'll be darned.  
 8 A. Started the girls team with a group of  
 9 people.  
 10 Q. Uh-huh.  
 11 A. Started the football team. We started  
 12 the baseball -- over. You know, they stopped it  
 13 and, during the term of integration, they kind of  
 14 froze those activities, but we started all those  
 15 back.  
 16 Q. I remember when I was at junior high at  
 17 Cloverdale in Montgomery, the girls teams had to  
 18 have -- I think they had to have seven players.  
 19 It was -- it was like ridiculous.  
 20 A. Uh-huh.  
 21 Q. Very different rules about how they could  
 22 play too. I don't think they could -- some of  
 23 them couldn't cross -- I don't know. It was a

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1 different game.  
2 A. Well, you know, I like to think it's fun  
3 coaching. You know, I've won four state  
4 championships.  
5 Q. Congratulations.  
6 A. And the key element to it all, I've never  
7 accepted a dime of pay. From the board.  
8 Q. That's very commendable.  
9 A. I don't take a penny.  
10 Q. You get paid in other ways?  
11 A. Yes.  
12 Q. Yeah.  
13 I forgot to ask what committees you're  
14 on. I know you're on reapportionment.  
15 A. Judiciary, F&T, education, budget.  
16 Q. And for the record, would you spell out  
17 F&T?  
18 A. Finance and taxation. Education  
19 committee.  
20 Q. So four committees?  
21 A. No, I -- I'm on rules.  
22 Q. Rules?  
23 A. I'm on banking and insurance.

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1 Q. I've got --  
2 A. Confirmation. Confirmation.  
3 Q. Confirmation?  
4 A. Education policy.  
5 Q. Is that different from education?  
6 A. Yeah. That's where we make the policies  
7 and rules on education policy. Of course, the --  
8 Q. That's a lot of committees.  
9 A. Yeah, it's -- and the budget is where we  
10 deal with the money.  
11 Q. Uh-huh. Do you chair any of these  
12 committees right now?  
13 A. No.  
14 Q. Have you chaired any of them in the past?  
15 A. Yes. I've chaired judiciary in the past  
16 for about ten years.  
17 Q. Did you attend any of the legislative  
18 hearings before redistricting, before the 2020  
19 redistricting was done in 2021?  
20 A. What hearings are you referring to?  
21 Q. Let me back up. Thank you.  
22 If you'll recall, the committee had a  
23 series of about 23, 24 hearings around the state

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1 to take input from people on how they wanted the  
2 Congressional districts, the State Board of  
3 Education districts, the House districts and the  
4 Senate districts drawn. Do you recall that?  
5 A. I do.  
6 Q. And this year, instead of traveling  
7 around, we did them all by Zoom, which was a lot  
8 easier. Did you attend any of those, sir?  
9 A. I think I attended the one at Lawson  
10 State. I think it was the one there at Lawson  
11 State.  
12 Q. Do you know if you spoke at that one?  
13 A. I'm not sure.  
14 Q. Okay.  
15 A. I --  
16 Q. Did you?  
17 A. Come to think about it, there was some  
18 conversation about opportunity districts. I may  
19 have made a comment.  
20 Q. Okay.  
21 A. Something like that.  
22 Q. And did you submit any maps to the  
23 legislature?

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1 A. For the opportunity districts. The whole  
2 county plan.  
3 Q. You submitted the whole county plan?  
4 A. The whole county plan.  
5 Q. Also known as the Smitherman Plan?  
6 A. Yes.  
7 Q. Did you develop that with Donna and her  
8 staff in the reapportionment office or was that  
9 developed somewhere else?  
10 A. I think it was developed somewhere else.  
11 Q. Okay. Do you know where?  
12 A. I don't quite recall right off. I don't.  
13 Q. Do you know who developed it?  
14 A. I can't recall the name. I can't recall  
15 the name.  
16 Q. How did that plan, the whole county  
17 plan/Smitherman Plan come to your attention?  
18 A. Well, the fact that I myself was very  
19 concerned with splitting of the counties --  
20 Q. Uh-huh.  
21 A. -- particularly Jefferson County.  
22 Q. Uh-huh.  
23 A. And, you know, we had conversations

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1 and -- regarding about the need for a whole county  
2 plan. And it would seem like the committee could  
3 not put a whole county plan out there.

4 Q. Uh-huh.

5 A. So at that point I -- I got interested in  
6 seeing what we could do to get a whole county  
7 plan.

8 Q. So did you talk to someone or did someone  
9 come to you because they knew you had an interest  
10 in it and say hey, we've drawn this plan? Or do  
11 you recall what happened?

12 A. I can't recall what happened exactly.  
13 (Defendant's Exhibit 1 was marked  
14 for identification and copy of  
15 same is attached hereto.)

16 Q. (BY MR. WALKER:) I show you, Senator  
17 Smitherman, what was previously introduced as  
18 Document 242-4, which is the 2021 Plan. And if  
19 you'll turn over to the back, that's the  
20 2021 Plan, the Congressional Plan. Do you  
21 recognize that?

22 A. I've seen this plan before.

23 Q. What did you like and not like about the

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1 2021 Plan?

2 A. Compared to what? That's the way I  
3 probably ought to ask you. Compared to?

4 Q. Well, certainly compared to the  
5 Smitherman Plan, it doesn't have --

6 A. Oh, now I'm with you. We're together  
7 now.

8 Q. All right. Answer that way if you want  
9 to.

10 A. I know what you mean.

11 You say what I thought about this plan.  
12 I thought that this plan -- and still do, the  
13 resemblance of it, that it's gerrymandering.

14 Q. Uh-huh.

15 A. I think that it's -- it was, you know --  
16 you hate to say the realities of the truth, but  
17 it's racially split up. I mean, this bottom part  
18 is predominantly African American, and the top  
19 part is predominantly white. And it was split up  
20 that way.

21 And you can see the way the district is  
22 when I was talking about the resources. You know  
23 that if you look, you look at this part of

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1 Jefferson County, you look at --

2 Q. Are you talking about the part of  
3 Jefferson County in CD-7?

4 A. In 7, yes.

5 Q. Uh-huh. Yes, sir.

6 A. You look at the counties that's connected  
7 to it, and the resources that go in that district  
8 has got to go all the way down to these people as  
9 well.

10 Q. All the way down to Clarke County?

11 A. Yes.

12 Q. Yeah.

13 A. And then on the other side, those  
14 resources have got to go all the way down to  
15 Chilton County, through Shelby, Bibb, and up to  
16 Blount.

17 So the county, you know, we're only  
18 getting a proportion -- you know, whatever that  
19 portion is left -- one, two, three, four, five --  
20 one-fifth in 6, and we're getting one, two, three,  
21 four, five, six, seven, eight, nine, ten, eleven  
22 twelve -- one-twelfth in 7.

23 Q. Uh-huh.

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1 A. So, I mean, it's really a big disservice  
2 to us in Jefferson County --

3 Q. Okay.

4 A. -- to be split up like that. And to --  
5 you know, and to the voters as well.

6 Q. And you referred to the black population  
7 being split up in the southern half of the map, if  
8 I understood you. What were you referring to  
9 there? The split in the Black Belt? Or something  
10 else?

11 A. In Jefferson County.

12 Q. Oh, in Jefferson County?

13 A. I'm talking about Jefferson County.

14 Q. I'm sorry. Thank you.

15 A. All that conversation was centered around  
16 Jefferson County.

17 Q. Okay.

18 A. You know, the percentage that we get, you  
19 know, and versus not getting.

20 Q. Now I --

21 A. No, I was talking about us in Jefferson  
22 County.

23 Q. Now I understand what you're saying. The

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1 southern part of Jefferson County.  
 2 You mentioned your belief that there was  
 3 gerrymandering in this map. Were you referring to  
 4 Jefferson County or to any other place?  
 5 A. Well, in Jefferson County. You know. I  
 6 think you might have -- you might have had  
 7 something similar in -- I don't know. Maybe in  
 8 Mobile or in that area. But --  
 9 Q. Mobile's whole.  
 10 A. Yeah. But I'm pretty sure that you're  
 11 talking about -- well, I may have been talking  
 12 about now.  
 13 Q. Oh, now.  
 14 A. You got a little split down there.  
 15 Q. Oh, okay.  
 16 A. But Jefferson County in this map was what  
 17 I was talking primarily. Although there are other  
 18 areas --  
 19 Q. Uh-huh.  
 20 A. -- but Jefferson County, you know, is my  
 21 concern.  
 22 I see Tuscaloosa the same way. You  
 23 know. And even Montgomery to an extent. You

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1 know.  
 2 Q. So as you look at this map, the 2021 Map,  
 3 is your complaint about racial gerrymandering  
 4 focused on Jefferson County or any other places in  
 5 addition to Jefferson County?  
 6 A. Well, Jefferson County is the primary.  
 7 Q. Okay.  
 8 A. Is my primary. Although there are some  
 9 other areas as well.  
 10 Q. And can you specify those?  
 11 A. Oh --  
 12 Q. If you know.  
 13 A. No. I'm just looking at this in general.  
 14 You know, as I mentioned, you have Tuscaloosa.  
 15 I look at this, Montgomery, coming out of Lowndes.  
 16 Let me see. Let me see.  
 17 And, of course -- and, you know, you  
 18 have a few other areas that provide -- that may  
 19 provide the same thing. I would have to look at  
 20 their makeup and -- of those areas in terms of the  
 21 population to be sure. I see Lauderdale -- to be  
 22 sure about the -- there was one more I saw here.  
 23 Like Escambia.

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1 Q. Escambia. Yeah.  
 2 A. Yeah, yeah. So I would have to look at  
 3 that population just to know because I don't have  
 4 those figures in front of me. But I do know in  
 5 the Tuscaloosa area, that bottom area is African  
 6 American.  
 7 Q. Do you know --  
 8 A. Predominantly. Jefferson County  
 9 definitely.  
 10 Q. I'm sorry. I didn't mean to interrupt  
 11 you.  
 12 Do you know whether or not the split in  
 13 Tuscaloosa County is along racial lines?  
 14 A. From my knowledge of Tuscaloosa County, I  
 15 would say yes.  
 16 Q. Okay. Do you know whether or not the  
 17 split in Escambia County is on racial lines?  
 18 A. I don't know.  
 19 Q. Do you know whether or not the split in  
 20 Lauderdale County is on racial lines?  
 21 A. At this time, I do not know.  
 22 Q. Okay. And then what about the split in  
 23 Montgomery County; do you know whether that was on

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1 racial lines?  
 2 A. Yes. I think it was.  
 3 Q. You think it was?  
 4 A. Yes.  
 5 Q. What district did you live in under this  
 6 map, the 2021 Map? Were you in Congressional  
 7 District 7?  
 8 A. Oh, yes. I live in 7.  
 9 Q. Do you have any opinion as to what role,  
 10 if any, race played in the drawing of this map?  
 11 A. Yes, I do. I have an opinion.  
 12 Q. All right. Would you tell me, sir?  
 13 A. I think race is one of the predominant  
 14 things that was in the drawing of this map. You  
 15 look at the large numbers of African Americans  
 16 being packed over in that district, I think that  
 17 race had a lot to do with it.  
 18 Q. And when you say in that district, you're  
 19 referring to the large number of African Americans  
 20 in CD-7?  
 21 A. CD-7, yes.  
 22 Q. Okay. Any other way in which race in  
 23 your opinion played a role in this map?



<p style="text-align: right;">Page 85</p> <p>1 A. Yes. The split of Jefferson County.                  2 Q. Jefferson County? Okay.                  3 A. And Tuscaloosa.                  4 Q. And Tuscaloosa?                  5 A. And Montgomery.                  6 Q. And Montgomery. Okay.                  7 And do you -- other than your opinion,                  8 do you have any evidence that you could tell me                  9 that race played a role in the way the lines were                  10 drawn in Tuscaloosa and Jefferson and Montgomery                  11 County?                  12 A. The numbers, you know, itself speaks for                  13 itself, even though I stated my opinion. I think                  14 if you look at those numbers, if you look at the                  15 numbers and the breakup -- breakdown of those                  16 districts, you'll see where race played a large                  17 factor in the drawing of these districts, how, you                  18 know, the African Americans, if you look at                  19 those -- of course, you know, you can't know by                  20 memory, but if you look at -- I'm not saying you                  21 can't --                  22 Q. Yeah.                  23 A. I mean --</p>	<p style="text-align: right;">Page 87</p> <p>1 Q. Uh-huh.                  2 A. I mean, you know, we're in a situation --                  3 this is the best way to say it. You'll know what                  4 I was -- we're in a situation where, look, it's 27                  5 versus 8.                  6 Q. Understand.                  7 A. You know, if you took out -- let me say                  8 it this way. If you took out -- if you took out 9                  9 on the majority side, you got 18. So politics,                  10 it's not a necessity for politics when you got 27                  11 people. So I can only assume, based on the things                  12 I just told you there was, that race was the                  13 factor. Because you in control. You got the                  14 numbers. You know, it's no need, you know -- you                  15 know, politics? Why would you be concerned about                  16 the politics side of it when you control the                  17 numbers? So it's -- in drawing it, the way it's                  18 made up, I would say that race was the factor.                  19 Q. And just to be clear on the record, when                  20 you said 27 and 8, what you were referring to was                  21 27 Republican members of the Alabama senate and 8                  22 Democratic members of the Alabama senate; is that                  23 correct?</p>
<p style="text-align: right;">Page 86</p> <p>1 Q. Oh, trust me, I'm aware of --                  2 A. But if you look at the precincts.                  3 Q. Yeah.                  4 A. And naturally, you know, once you go back                  5 now --                  6 Q. Uh-huh.                  7 A. -- that they're drawn and look in these                  8 precincts and see the majority-minority population                  9 in those precincts itself and you see how it's                  10 drawn around, curved around, and they're put over                  11 there, you'll be -- it will be even a lot                  12 clearer --                  13 Q. Okay.                  14 A. -- that race was a factor.                  15 Q. That's a good answer. Thank you.                  16 Do you have any opinion, if any, what                  17 role politics played in the drawing of this map?                  18 A. No, I -- I haven't been on                  19 reapportionment. I -- I don't -- I can't see                  20 where -- let me say it like this. No, I can't see                  21 it to that degree. I see more race. I was trying                  22 to figure out how to say that. I see it more on a                  23 racial than on the actual politics itself.</p>	<p style="text-align: right;">Page 88</p> <p>1 A. That's correct, with 7 of the 8 Democrats                  2 being black.                  3 Q. Right.                  4 Could we agree that in any conceivable                  5 circumstance here in Alabama, the congressional                  6 black candidate of choice is going to be a                  7 Democrat?                  8 A. I don't know. I can't say will or won't.                  9 Q. Well --                  10 A. Because I don't, you know -- I would                  11 say -- I would say it would provide -- you know,                  12 when we say about the opportunity district so the                  13 people can vote for the person of their choice.                  14 Q. Right. Uh-huh.                  15 A. Now, whether that's going to be a, you                  16 know -- political party, you know, I don't know,                  17 you know, because we've had situations where                  18 people have had the opportunity to elect the                  19 person of their choice, that they have selected --                  20 not in many, but they've selected African                  21 Americans.                  22 Q. Who do you think is the -- did I cut you                  23 off, sir?</p>



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1 A. I was just saying they have elected  
 2 African Americans.  
 3 Q. Yeah.  
 4 Who do you think is the black candidate  
 5 of choice in the race going on in CD-2 now?  
 6 Between -- go ahead.  
 7 A. Well, you know, we're in the general  
 8 election now. So I think the candidate of choice  
 9 most likely would be Shomari Figures.  
 10 Q. And why is that?  
 11 A. I mean, because he -- I just think  
 12 because of his appeal to the people, you know, his  
 13 experience having been in Washington. You know,  
 14 his experience, his pedigree. He has an  
 15 understanding of the process. His dad was in the  
 16 legislature. And so I think that, you know, that  
 17 he probably would be, but there's no guarantee  
 18 because of the makeup of that district. It's --  
 19 as I said earlier, I appreciate the court's  
 20 providing an opportunity district, but that  
 21 functionality study for that district is not as  
 22 solid as the one up here. So I am concerned about  
 23 that factor, the functionality study is not as

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1 solid. And that's why -- one of the reasons why I  
 2 would have preferred that that district had been  
 3 on this end. On this end.  
 4 Q. Uh-huh.  
 5 A. In Jefferson County being 6, so that we  
 6 would have an even greater opportunity of that  
 7 taking place.  
 8 MR. CLEMON: We've been going about an  
 9 hour and a half now. Let's --  
 10 MR. WALKER: Yeah, I always lose track of  
 11 it, Judge.  
 12 Let's take a ten-minute break. It's  
 13 10:27. We'll take a little break.  
 14 (Recess.)  
 15 THE WITNESS: Counsel, I wanted to make  
 16 one correction.  
 17 Q. (BY MR. WALKER:) Okay. Are we on the  
 18 record? Okay.  
 19 A. On the Zoom meeting --  
 20 Q. Yes, sir.  
 21 A. -- that we had, I said Thursday? Also,  
 22 Senator Singleton was on that meeting.  
 23 Q. Okay.

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1 A. I just wanted to --  
 2 Q. Thanks for doing that. I appreciate it.  
 3 We were talking about, when we took our  
 4 break, the 2021 Plan and I think your, if it's  
 5 fair to say, disappointment that the legislature  
 6 didn't pass a plan that had two opportunity  
 7 districts instead of this plan which had -- which  
 8 continued, I guess, CD-7. Is that right?  
 9 A. That's correct.  
 10 Q. If the legislature had passed or, looking  
 11 at it from that point of view at the time, if the  
 12 legislature had passed a plan with two opportunity  
 13 districts, was it your belief that those  
 14 opportunity districts, the ones proposed in your  
 15 plan, for example, would have returned the black  
 16 candidate of choice?  
 17 A. Yes.  
 18 Q. The black -- would have won in those two  
 19 districts?  
 20 A. Yes.  
 21 Q. And that candidate, more likely than not,  
 22 would have been Democrat; is that correct?  
 23 A. In 7, it probably would. I can't assure

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1 what it would have been in the, you know, second  
 2 district, opportunity district but --  
 3 Q. Well, do you think it --  
 4 A. I can't assure it would have been in 7,  
 5 but I think the probability is a lot higher.  
 6 Q. I think we could think and hope that  
 7 it -- it would be --  
 8 A. Yes.  
 9 Q. -- who it is now.  
 10 Would it be reasonable for the  
 11 Republican members of the legislature to think  
 12 that creating two opportunity districts would be  
 13 creating two opportunities for Democrats to have  
 14 seats in Congress?  
 15 A. No. Because the opportunity district  
 16 still is majority white. It's -- so I don't think  
 17 that they would think that, knowing the general  
 18 makeup of the parties. I don't think that that  
 19 would be, you know --  
 20 Q. Uh-huh.  
 21 A. -- at all. It's just an opportunity.  
 22 Q. But your review of the reports of how  
 23 those -- the performance reports convinced you

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1 that the black candidate of choice more likely  
 2 than not would win in those two opportunity  
 3 districts; is that correct? That was your  
 4 previous testimony?

5 A. Well, I would just say this, that I would  
 6 think that they would have at least in an  
 7 opportunity district a 50-50 chance in that  
 8 district. I would think it would be a little  
 9 higher than 50-50, naturally, in 7. But in that  
 10 district. And there again, the basis for that  
 11 would be also the functionality report.

12 Q. Uh-huh.

13 A. You know, just because you draw and call  
 14 it --

15 Q. Yeah.

16 A. -- something, you have to look at the  
 17 reports to see how they performed, and that gives  
 18 you a reasonable expectation of having an  
 19 opportunity to be able to do.

20 Q. Do you think that Republican members of  
 21 the legislature would be disinclined to pass a  
 22 plan that would give Democrats the opportunity to  
 23 have two seats in Congress instead of one on party

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1 politics alone?

2 A. I don't --

3 MR. BLACKSHER: Object to form.

4 Q. (BY MR. WALKER:) Okay.

5 A. I don't -- I don't know really because  
 6 the concern that, you know, we have here is race  
 7 and African Americans --

8 Q. Uh-huh.

9 A. -- having an opportunity to elect, you  
 10 know, candidates of their choice. I think that's  
 11 the key element here. It's not -- you know, it's  
 12 not the party per se.

13 Q. Right.

14 A. Yeah, this is -- it's not party driven.  
 15 You know, I just think that it's -- even though  
 16 members are -- you know, the natural majority are  
 17 African Americans at this time in the Democratic  
 18 party. But remember once upon a time they were  
 19 the Republican party. Another time, you know, it  
 20 was -- so it's -- that's why I said it's not the  
 21 politics. It's the opportunity.

22 Q. Yeah.

23 A. When the opportunity existed back then,

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1 it was in the Republican party, and that's where  
 2 African Americans were trying to seek the  
 3 opportunity to have representation. So that's it  
 4 more than just the political party.

5 Q. Did any member of the legislature tell  
 6 you or communicate to you in any way that they did  
 7 not want to create -- excuse me -- they did not  
 8 want to enact a plan with two opportunity  
 9 districts because of race as opposed to politics?

10 MR. BLACKSHER: Object to form.

11 Go ahead.

12 A. I can't recall verbally them saying it  
 13 for either way.

14 Q. (BY MR. WALKER:) Okay.

15 A. I don't even think I had that  
 16 conversation.

17 Q. With any --

18 A. I can't recall having that conversation  
 19 with anybody, you know.

20 Q. Now, of course, y'all, through the  
 21 strangeness of this litigation, sat out the  
 22 Allen v. Milligan lawsuit. But did -- are you  
 23 aware that went to the Supreme Court? The

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1 Milligan case did?

2 MR. BLACKSHER: Object to form. We  
 3 didn't sit it out. That's an improper predicate.

4 MR. WALKER: Well, that's a -- that's  
 5 a -- you're right.

6 Q. Are you aware that the Milligan case went  
 7 to the Supreme Court?

8 A. I don't recall much about the -- that  
 9 phase of the Milligan case. I could have -- I  
 10 could have been told that and I could have -- you  
 11 know what I'm saying --

12 Q. Yeah.

13 A. -- so I'm not going to say no, I don't.  
 14 I don't -- I just don't recall the conversation.  
 15 I didn't track it, in other words, so I --

16 Q. That's fair.

17 You didn't attend oral argument in  
 18 Washington?

19 A. No, no. I know I didn't.

20 Q. Do you recall whether or not you made any  
 21 public comments about the case?

22 A. The only -- the only comments that I  
 23 recall -- I recall. That doesn't mean I did

<p style="text-align: right;">Page 97</p> <p>1 not -- I recall was the conversation basically</p> <p>2 saying that the opportunity district on this end.</p> <p>3 Q. Uh-huh.</p> <p>4 A. -- would be a better opportunity district</p> <p>5 than on that end. I think most -- most of my</p> <p>6 conversations just centered around my belief that</p> <p>7 this was a better plan in terms of opportunity</p> <p>8 districts -- was a better opportunity than the one</p> <p>9 we have. But the one we have is better than not</p> <p>10 having an opportunity at all, so I support it.</p> <p>11 Q. Do you have an understanding of the</p> <p>12 real-world impact of what the Supreme Court</p> <p>13 decided in the Allen v. Milligan case?</p> <p>14 MR. BLACKSHER: Object to form.</p> <p>15 A. Not by memory.</p> <p>16 Q. (BY MR. WALKER:) Okay.</p> <p>17 A. I'm sure, you know, that if it were</p> <p>18 before me and I was reading it, I would definitely</p> <p>19 have a full understanding.</p> <p>20 Q. Of course you would.</p> <p>21 Well, let me ask you this. Did you</p> <p>22 follow the -- well, you participated in the 2023</p> <p>23 legislative proceedings, special session, did you</p>	<p style="text-align: right;">Page 99</p> <p>1 A. Uh-huh. I saw his plan. I looked at it.</p> <p>2 Q. Did you speak at the legislative hearings</p> <p>3 for the -- in connection with the 2023</p> <p>4 redistricting, do you recall?</p> <p>5 A. I made some comments.</p> <p>6 Q. Okay.</p> <p>7 A. I did make comments.</p> <p>8 Q. And, generally, were those in preference</p> <p>9 for a plan with two opportunity districts?</p> <p>10 A. I think it was.</p> <p>11 Q. You hadn't changed your position?</p> <p>12 A. Oh, no. No.</p> <p>13 Q. Yeah, okay.</p> <p>14 A. Not at all. Two opportunity districts.</p> <p>15 Q. And you submitted -- you submitted for</p> <p>16 consideration in 2023 the Smitherman Plan, did you</p> <p>17 not?</p> <p>18 A. I did.</p> <p>19 Q. Okay. What happened to that?</p> <p>20 A. It was rejected by the committee. And</p> <p>21 then when I presented it on the floor as a</p> <p>22 substitute, it was voted down by the majority.</p> <p>23 And the committee is made up of -- the majority of</p>
<p style="text-align: right;">Page 98</p> <p>1 not?</p> <p>2 A. I did.</p> <p>3 Q. And in the activities leading up to it?</p> <p>4 The committee meetings.</p> <p>5 A. Yes, committee meetings. I was at</p> <p>6 committee meetings.</p> <p>7 Q. Did you review the -- a number of maps</p> <p>8 were submitted at that time. Did you review the</p> <p>9 VRA Plaintiffs Remedial Plan?</p> <p>10 A. And what was that? VRA?</p> <p>11 Q. That was one of the plans. Do you recall</p> <p>12 whether you reviewed it or not? Do you recall</p> <p>13 whether you reviewed any of the remedial plans</p> <p>14 that were submitted other than the Singleton Plan</p> <p>15 and the Smitherman Plan?</p> <p>16 A. I looked at the -- what is that? The</p> <p>17 Milligan? Is that what you just said? The</p> <p>18 Milligan?</p> <p>19 Q. Well, there was the VRA Plaintiffs</p> <p>20 Remedial Plan, the Community of Interest Plan --</p> <p>21 A. Oh, yes, I looked at the one that -- I</p> <p>22 saw the plan that Senator Livingston --</p> <p>23 Q. And the Livingston Plan for 2 and 3?</p>	<p style="text-align: right;">Page 100</p> <p>1 people that are on the committee are members of</p> <p>2 the majority party.</p> <p>3 Q. That's the way the act is written, isn't</p> <p>4 it? Do you recall? The makeup of the -- how the</p> <p>5 committee is made up?</p> <p>6 A. I don't recall that.</p> <p>7 Q. Okay.</p> <p>8 A. But that is how it's made up, but I don't</p> <p>9 recall.</p> <p>10 MR. BLACKSHER: Which committee are we</p> <p>11 talking about? The reapportionment committee?</p> <p>12 Q. (BY MR. WALKER:) Which committee were</p> <p>13 you talking about? That voted?</p> <p>14 A. Yeah, I was talking about the -- no, the</p> <p>15 standing committee. It was put in. It was put</p> <p>16 confirmation.</p> <p>17 Q. Put in --</p> <p>18 A. I think it was.</p> <p>19 Q. Okay.</p> <p>20 A. It was the committee it was put in that</p> <p>21 we had debate about the plans is what I was</p> <p>22 talking about. That committee rejected it. And</p> <p>23 so it was not moved on to be considered on the</p>

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1 special order calendar. And then when we got on  
 2 the floor, we offered it as a substitute.  
 3 Q. (BY MR. WALKER:) And the substitute was  
 4 rejected?  
 5 A. It was rejected.  
 6 (Defendant's Exhibit 2 was marked  
 7 for identification and copy of  
 8 same is attached hereto.)  
 9 Q. Let me show you what I've marked as  
 10 Exhibit 2. And if you'll turn to the back of it,  
 11 this is -- this is Document 242-5 from 1536,  
 12 Exhibit 5, the 2023 Plan.  
 13 Do you recognize this as the Enacted  
 14 Plan, the 2023 Plan?  
 15 A. The best to my knowledge, I do.  
 16 Q. I'll represent to you that it is.  
 17 A. Okay.  
 18 Q. Okay.  
 19 MR. BLACKSHER: For the record, the  
 20 docket numbers you are citing are in the Caster  
 21 action.  
 22 MR. WALKER: Yeah, 1536.  
 23 Q. What did you think of this map?

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1 A. I thought this map gerrymandered  
 2 Jefferson County. Split us up. And the same --  
 3 you know, without being repetitive to all the  
 4 things that I said to you previously about that, I  
 5 would just embrace those again.  
 6 Q. Okay.  
 7 A. You know, that it just -- it does us a  
 8 very just injustice in terms of the way that it  
 9 splits us up. In particular, as I said, if you  
 10 look at the count, and you look at the population,  
 11 those areas of the county, you clearly will see  
 12 that that's race, you know, on the bottom.  
 13 Majority of that are predominantly African  
 14 Americans on the bottom part.  
 15 Q. So is it fair to say that you believe the  
 16 part of CD-7 in the 2023 Plan that is in Jefferson  
 17 County is a racial gerrymander?  
 18 A. I think that splitting the county is a  
 19 racial gerrymander.  
 20 Q. Okay. What about the split in  
 21 Tuscaloosa? That's different from the split in  
 22 the 2021 Plan. Do you have an opinion as to  
 23 whether or not that's a racial gerrymander?

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1 A. I think it is.  
 2 Q. Okay.  
 3 A. I think it is.  
 4 Q. And have you looked at any precincts to  
 5 see whether it is or do you have any evidential  
 6 basis for that?  
 7 A. Just -- I haven't looked specifically at  
 8 the inside of those precincts. But it's just my  
 9 general -- first of all, just my general knowledge  
 10 of those areas and who lives there.  
 11 Q. Okay.  
 12 A. I know where you take Tuscaloosa and  
 13 you're down there where you've got Central High  
 14 School, you know. Or Paul Bryant. You know,  
 15 that's predominantly African American schools.  
 16 Those neighborhoods are predominantly African  
 17 American in that area.  
 18 Q. What about the split up there in  
 19 Lauderdale County? Do you have any reason to  
 20 believe that is along racial lines?  
 21 A. I don't know either way.  
 22 Q. Okay. What about the split in Talladega  
 23 County? Do you have any reason to believe that's

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1 along racial lines?  
 2 A. Let me see where that is.  
 3 Q. Let me show you right here, sir. See  
 4 right here down at this little -- down in the  
 5 corner here?  
 6 A. Oh. Okay. Talladega.  
 7 I don't know. I don't know.  
 8 Q. What about the split in Elmore County?  
 9 Do you have any reason to believe that's along  
 10 racial lines?  
 11 A. Elmore? Elmore? In this district -- let  
 12 me ask you a question if you can answer that.  
 13 Q. Okay.  
 14 A. In this district, the opportunity  
 15 district is what? 2?  
 16 Q. Yes.  
 17 A. Yes, I would think that that would be  
 18 split on racial lines. I don't have any proof,  
 19 you know, sitting here.  
 20 Q. But --  
 21 A. But I would think that it would be.  
 22 Q. I answered your question wrong. This --  
 23 scratch that.



<p style="text-align: right;">Page 105</p> <p>1 Look at Covington County. Do you see --</p> <p>2 there's a split there. Do you have any reason to</p> <p>3 believe that that is along racial lines?</p> <p>4 A. No, I don't have any.</p> <p>5 Q. Okay.</p> <p>6 A. I don't know that area well enough to --</p> <p>7 Q. Okay. Do you have an opinion as to the</p> <p>8 role that politics played in the drawing of this</p> <p>9 map?</p> <p>10 A. I could -- let me -- the best way I can</p> <p>11 answer you is this way. I can't see why politics</p> <p>12 should have played a role in here.</p> <p>13 Q. Okay.</p> <p>14 A. When you got 27 people. I keep saying</p> <p>15 that. That's -- 27? You can cut off filibuster</p> <p>16 at 21. You could get what you want with 18.</p> <p>17 Q. Right.</p> <p>18 A. And still have 7, 8, or 9 to spare. So</p> <p>19 there's no reason for the majority to interject</p> <p>20 politics into it to that level, to that degree.</p> <p>21 Q. So the Republicans have a, I guess your</p> <p>22 point is, a supermajority in the senate?</p> <p>23 A. Yes.</p>	<p style="text-align: right;">Page 107</p> <p>1 wouldn't be a consideration because they won</p> <p>2 decisively and took over the legislature on</p> <p>3 districts that the majority Democrats drew. So</p> <p>4 they got the majority on districts we drew. So it</p> <p>5 was -- those districts were very successful --</p> <p>6 Q. Yeah.</p> <p>7 A. -- for their election. So I don't see</p> <p>8 any concern from the political standpoint when you</p> <p>9 take those districts and you -- you know, you get</p> <p>10 that large a number out of districts that you</p> <p>11 didn't draw.</p> <p>12 Q. Right.</p> <p>13 A. Then there's no concern about -- I won't</p> <p>14 say there's no concern. There shouldn't be any</p> <p>15 concern about from a politics standpoint because,</p> <p>16 you know, these districts are very successful as</p> <p>17 they are.</p> <p>18 Q. Right.</p> <p>19 A. As they were then --</p> <p>20 Q. Right.</p> <p>21 A. -- for them.</p> <p>22 Q. But we're not talking about redrawing the</p> <p>23 legislative districts. I'm talking about</p>
<p style="text-align: right;">Page 106</p> <p>1 Q. But with regard to drawing new</p> <p>2 congressional plans, would you agree that the</p> <p>3 Republicans have an interest in drawing as few</p> <p>4 Democratic districts as they can?</p> <p>5 A. Well, my answer to that is they would</p> <p>6 have an interest, I think -- well, these districts</p> <p>7 reflected their -- I won't say their interest.</p> <p>8 Reflected what they did.</p> <p>9 Q. Uh-huh.</p> <p>10 A. They drew as few as black people in their</p> <p>11 districts as they could.</p> <p>12 Q. Uh-huh. Would you expect that a</p> <p>13 legislature controlled by Republicans would have</p> <p>14 an interest in creating fewer Democratic</p> <p>15 congressional seats if that were an option for it?</p> <p>16 Would that be, in your experience for you as a</p> <p>17 legislator, a consideration that one party would</p> <p>18 have in not creating seats for the other party in</p> <p>19 Congress if they could?</p> <p>20 A. Well, under our situation, which, after</p> <p>21 the 2010 --</p> <p>22 Q. Uh-huh.</p> <p>23 A. -- districts, I would think that that</p>	<p style="text-align: right;">Page 108</p> <p>1 redrawing the Congressional districts. And just</p> <p>2 really the question I'd ask you pretty simply is</p> <p>3 would you agree that whoever's in charge -- let's</p> <p>4 say one party is in charge of the legislature --</p> <p>5 that they have an interest in minimizing</p> <p>6 representation of the other party in the national</p> <p>7 Congress?</p> <p>8 MR. BLACKSHER: Object to form.</p> <p>9 Q. (BY MR. WALKER:) When they do</p> <p>10 redistricting?</p> <p>11 In other words, if the Democrats are in</p> <p>12 power, they have an interest at least in thinking</p> <p>13 about minimizing how many Republicans they send to</p> <p>14 the Congress. And if the Republicans are in power</p> <p>15 in the legislature, they have an interest at least</p> <p>16 in thinking about minimizing how many Democrats</p> <p>17 they send to the national Congress. Would you</p> <p>18 agree with that?</p> <p>19 MR. BLACKSHER: Object to form.</p> <p>20 Q. (BY MR. WALKER:) That's just politics;</p> <p>21 right?</p> <p>22 A. Well, I would say this, is that -- is</p> <p>23 that race can't be a factor no matter what that</p>



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1 interest is there.

2 Q. Uh-huh.

3 A. And that's the concern that I have; that  
4 race, you know, was a factor or is a factor or  
5 would be a factor or that is a factor in terms of  
6 making -- approaching it from the question that  
7 you asked me.

8 Q. Uh-huh.

9 A. So, you know, and the numbers even in the  
10 past, you know, districts that were drawn speaks  
11 for itself. As I said, when you've got  
12 65 percent --

13 Q. Right.

14 A. -- 70 percent black folks packed in one  
15 district, you know, that's -- that's race. It  
16 doesn't take -- it didn't take -- it doesn't take  
17 65 percent. It doesn't take 70 percent. It  
18 doesn't take 62 percent, you know, to be able to  
19 accomplish whatever other ends that you may or may  
20 not be trying to reach. So it's -- so that's  
21 where you have to -- I have to assume and my  
22 perception is that race was an issue because of  
23 such large, as the words we normally use, stacking

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1 and packing. You know, I mean, that's --

2 Q. Uh-huh.

3 A. -- it speaks for itself.

4 Q. Do you have an opinion as to whether or  
5 not it's legitimate for the legislature to  
6 consider political goals when it draws  
7 Congressional districts?

8 A. Not over the rights of voters, individual  
9 voters, no. That's our constitutional right.  
10 That's a constitutional right of people, you know,  
11 to have that opportunity to vote and get the  
12 person they want.

13 When we start -- the question that you  
14 asked -- you know, that you asked, my perception  
15 of the question is that's political and party.  
16 Over here, it's constitutional. And that's the  
17 key element, that this is a guaranteed right by  
18 national Constitution. This is just party rules  
19 or party desires, whether it be Republican or  
20 Democrat. That's just party rules. And that's  
21 not -- that's not our, lack of better word, it's  
22 not our statutes. This is just a concern of  
23 different parties. You know, we have something

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1 similar like that going on right now, you know,  
2 with the election, the changing of people and the  
3 people complaining because you change -- one  
4 party's changing and they got this other person.  
5 But as I myself say -- you know, and I'm not  
6 saying I know everything, but I know I'm a  
7 constitutional law professor for about 25 years.

8 Q. Right.

9 A. And that's a political question. That's  
10 the party. Even though you got folks on the  
11 other -- "We going to do this." But in reality,  
12 those issues are more akin to a party and it's  
13 not -- it's not the Constitution. It's not the  
14 law. You know, over here that right for, you  
15 know, minorities and blacks to have an opportunity  
16 to, as we say, in an opportunity district to elect  
17 a person, that's a constitutional issue.

18 Q. Do you have any evidence that you can  
19 tell us -- let me back up. Scratch that.

20 Did any member of the legislature  
21 communicate to you in any way -- email, text,  
22 speaking to you, however -- that he or she voted  
23 for the 2023 Plan, what I've shown to you as

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1 Defendant's Exhibit 2, because of race?

2 A. I don't recall having a conversation  
3 regarding that directly with anyone.

4 Q. Okay.

5 A. I'm not saying if I did or didn't. I  
6 don't recall having one.

7 Q. Is it appropriate for the legislature to  
8 consider population when it does redistricting?

9 A. What you mean by consider population? I  
10 know population means people and numbers.

11 Q. People -- oh, I know.

12 A. But what in particular about population?  
13 Was there something particular?

14 Q. Well, how many people live here as  
15 opposed to here. I mean --

16 A. We've got to get a certain number. I  
17 mean, within a deviation of the -- you know,  
18 this -- I think this is zero deviation we talked  
19 about here.

20 Q. Yeah.

21 A. In the past, we've had, you know, a small  
22 percentage of deviation.

23 Q. Right.

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1 A. But I think within that realm, whatever  
2 the rules are set, whether it's zero deviation or  
3 whether it's plus/minus 2 percent, 1 percent --  
4 Q. Yeah.  
5 A. -- whatever you have to to get those  
6 numbers, yes.  
7 Q. And with regard to constitutional,  
8 despite your counsel's arguments, the legislature  
9 has always understood that there should be no  
10 deviation, minimal deviation; is that correct?  
11 A. No. We've gone as high as 5 percent.  
12 Remember I've been --  
13 Q. In congressional?  
14 A. Oh, no, no, no, no, no.  
15 Q. Yeah. I'm sorry.  
16 A. I'm sorry.  
17 Q. I was referring to -- yeah.  
18 A. No, no. Not in congressional, no.  
19 Q. Yeah.  
20 MR. BLACKSHER: Object to form. Improper  
21 predicate.  
22 A. But I think that one of the things  
23 that -- you know, race shouldn't be a factor. And

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1 I'll just give you an idea. I mean, you take --  
2 when I started out representing Homewood, I was --  
3 my line was Valley Avenue. And then when we came  
4 back for reapportionment, because I had to add  
5 some additional people --  
6 Q. (BY MR. WALKER:) Uh-huh.  
7 A. -- we just picked up the line and moved  
8 it all the way down to Hollywood Boulevard.  
9 90 percent -- I won't say 90 percent.  
10 Q. Yeah.  
11 A. The vast majority of those people were  
12 Republicans and they were white voters. So race  
13 had nothing to do with it. It's just when you're  
14 getting those numbers, I just picked up the line  
15 and moved it down there. You know, I wasn't  
16 looking at -- you know, looking at was it white or  
17 black or anything like that. It's just that you  
18 don't. You know, you just look -- you don't let  
19 race be your dominant --  
20 Q. Understand.  
21 A. Yeah. Yeah. Regardless in my case  
22 whether it reduced my percentage from 52 to 50.  
23 You know, I mean, that's not the factor you look

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1 at.  
2 Q. You felt certain that you could win  
3 whatever the adjustment was; is that correct?  
4 A. Well, I was -- I was going to run. I  
5 can't say for certain. You know how voters are.  
6 You don't never know --  
7 Q. No, I don't. You do, but I don't.  
8 A. But I was --  
9 Q. Well, let me ask you another question.  
10 Do you think that when the legislature draws  
11 districts, it should take into consideration the  
12 address of the incumbent?  
13 A. I don't -- I don't know necessarily that  
14 you need to do that. I mean, because, you know,  
15 you look at the congressional map we're operating  
16 under now.  
17 Q. Yeah.  
18 A. Two incumbents will happen to be into the  
19 same district. You can't make that the dominant  
20 factor in your decision of drawing the district  
21 whether or not you want to do that. Just it  
22 can't -- that can't be the factor because that's  
23 not the controlling factor. The controlling

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1 factor in this case --  
2 Q. Yeah.  
3 A. -- and what we're talking about now is  
4 the opportunities for African Americans to elect a  
5 candidate of their choice.  
6 Q. Would you vote for a senate plan that  
7 paired you with another senator?  
8 A. Yes, if it was the proper plan. You  
9 know, if the plan met all the muster and  
10 requirements --  
11 Q. Uh-huh.  
12 A. -- and then -- yeah, I would. I mean,  
13 I --  
14 Q. Even if it paired you with another  
15 senator?  
16 A. Because -- yes, because it ain't going to  
17 make no difference if the folk want somebody else.  
18 It don't have to be another senator. It could be  
19 a House member. It could be just somebody who  
20 running. So, you know, I don't know that that's  
21 the controlling factor. The factor is going to be  
22 what kind of performance that I have done over the  
23 last four years, whether it be an incumbent I'm

<p style="text-align: right;">Page 117</p> <p>1 running against, whether it be a new person, or 2 somebody else, so. 3 Q. Is there a value to voters in having an 4 amount of stability in their district? And we 5 talked earlier about the value to voters in having 6 a long-term representative like you, somebody that 7 they can get to know and be comfortable with. Do 8 you recall that conversation we had earlier? 9 A. I remember we had some conversation about 10 that. 11 Q. So is there a value to voters in having a 12 district that remains stable if possible and where 13 the boundaries change, you know, as much as they 14 need to correct for population but otherwise don't 15 change much? Is there a value to voters in that? 16 A. Well, I would think the value would be 17 having somebody who represented what your 18 interests or concerns, not necessarily somebody 19 who been sitting there for 10, 15, or 20 years and 20 yet you don't have -- you're not represented, you 21 don't a chance to have those issues put before. 22 And I -- you know, I can tell you we, in our 23 process, you know, there are some areas that you</p>	<p style="text-align: right;">Page 119</p> <p>1 your district represents, if any? Or communities 2 of interest? Your Senate district? 3 A. Well, communities of interest, number one 4 would be education. Number two would be 5 opportunities for employment. It would be 6 opportunities for housing; you know, to actually 7 own a home -- home ownership. Because when you 8 in an urban area, you have a lot of apartments. 9 People want homes. Health, a community of 10 interest that we -- you know, we have great health 11 facilities, and we do have good ones here. And, 12 of course, crime. You know, crime. 13 Q. Sure. 14 A. So those would be some of the communities 15 of interest. 16 Q. Look at the 2023 map -- 17 A. This one? 18 Q. -- please. I think that's it. Turn 19 to -- 20 A. Number 5? 21 Q. Number -- yeah. 22 A. That's it. I see. That's it. Because 23 you got 2023 on the other side.</p>
<p style="text-align: right;">Page 118</p> <p>1 have African Americans who live in those areas, 2 and I'll just say this. I don't see their 3 interests being presented and fought for in our -- 4 in the senate. You know, I mean, you got people 5 there who are trying to help those people who -- 6 Q. Uh-huh. 7 A. -- they're not necessarily the legislator 8 in that district because that person is not 9 fighting that battle for them. So I think that's 10 why I say it's more important to have somebody 11 there who's going to speak up for you than just 12 somebody that say that they been there for a 13 while, you know, the name and that kind of thing. 14 Q. Do you know what a -- I know you do. 15 What's a community of interest, Senator 16 Smitherman? 17 A. Well, a community of interest is 18 communities who have a -- like desires, like 19 needs, who want similar representation, who not 20 necessarily think alike in everything, but they 21 have similar thoughts and beliefs in how things 22 ought to be done and what should be done. 23 Q. What is the community of interest that</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. That's right. Yeah. And I've got this 2 one marked wrong. Sorry. Let me find my copy. 3 Here it is. 4 Are there any communities of interest in 5 that map, the 2023 map, that you think should have 6 been kept together but were not? 7 A. Yes. Jefferson County. 8 Q. Jefferson County? 9 A. In particular. Yeah. 10 Q. Okay. Any others? 11 A. Well, Tuscaloosa. As best they could. 12 Tuscaloosa should have been kept together as best 13 they could as well. 14 Q. Is Tuscaloosa as a whole a community of 15 interest, do you know? 16 A. I don't know that much about them. 17 Q. Okay. 18 A. You know, I know about them due to other 19 activities being down there, you know, but I don't 20 know -- know it to that degree. 21 Q. Is there a racial community of interest 22 in Jefferson County? 23 A. What does that mean?</p>

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1 Q. Is there a community of interest of black  
 2 people as distinct -- in Jefferson County as  
 3 distinct from white people in Jefferson County?  
 4 A. I would say that there are various  
 5 issues --  
 6 Q. Uh-huh.  
 7 A. -- that may vary. And I think that you  
 8 may have a -- certain issues. But not -- not  
 9 necessarily a community of interest is just based  
 10 on race.  
 11 Q. Yeah.  
 12 A. Not here. I mean, because of the  
 13 diversity of this county, the diversity of the  
 14 district I represent. As I said earlier, this  
 15 county is a clear -- how should I put it? You  
 16 know how you have like a model home? You have a  
 17 model example of how it ought to be.  
 18 Q. Right.  
 19 A. This county is model example --  
 20 Q. I get you.  
 21 A. -- of how it ought to be with folks  
 22 living together --  
 23 Q. I get it.

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1 A. -- and being open-minded about each  
 2 other.  
 3 Q. You said there might be a few things  
 4 where there was a difference. What would those  
 5 be? Between the interests of the black citizens  
 6 of Jefferson County and the white citizens of  
 7 Jefferson County -- if I understood your response.  
 8 A. Oh, just maybe in the needs in those  
 9 communities. You know, just basic needs,  
 10 physiological needs and things of that nature.  
 11 And, you know, having someone there who would  
 12 speak up for you for those individual needs and  
 13 what-not. That's why it's important to have the,  
 14 you know, representative of your choice. Someone  
 15 asked -- that's as I said earlier about I have to  
 16 speak up even for areas in this state that's  
 17 nowhere near the district I represent because  
 18 those people won't speak up for them and they  
 19 represent them.  
 20 Q. What are some of those areas that you  
 21 feel called upon to speak up for because they're  
 22 not being represented properly?  
 23 A. Well, when I say not represented

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1 properly, I'm saying not having the opportunity to  
 2 get the resources and they need additional  
 3 assistance.  
 4 Q. Okay.  
 5 A. And it varies. I mean, you've got a  
 6 Black Belt.  
 7 Q. Uh-huh.  
 8 A. Or you take Montgomery. I'll just give  
 9 you a clear example. Worked hard with helping  
 10 them get the water thing, you know, they got.  
 11 Q. Right.  
 12 A. You know, those -- that's why I say  
 13 helping other areas that need somebody to speak  
 14 to help them. You know, some of them don't have  
 15 that kind of representation and you have to -- you  
 16 know, in my case, you just have to do the best you  
 17 can to try to help them.  
 18 Q. Do you have any information about what  
 19 was the intent of the legislature in drawing the  
 20 2023 map?  
 21 MR. BLACKSHER: Object to form.  
 22 A. You mean this map right here?  
 23 Q. (BY MR. WALKER:) Yes, sir.

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1 A. This one here?  
 2 Q. Yes, sir.  
 3 A. No, I don't -- I don't know what the  
 4 majority's intent was because I think that we very  
 5 clearly expressed our concerns about this district  
 6 and about splitting counties and about, you know,  
 7 desires for the opportunity district and the  
 8 functionality of, you know, of drawing those  
 9 districts and providing those opportunities.  
 10 So I don't know. After telling them  
 11 that -- after telling them that or sharing that  
 12 with them and nothing different was done, I don't  
 13 know what their intent because they didn't move  
 14 off the needle. That's just the best way I can  
 15 say it to you.  
 16 You know, they understood what the  
 17 concerns were and the needs and our desires, but  
 18 it didn't move them off the needle at all, you  
 19 know. So I don't know what their intents were,  
 20 you know, based on that.  
 21 In fact, that's -- you know, it was the  
 22 same thing with our committee. I was -- I was  
 23 just kind of disappointed that the committee



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1 didn't sit down prior -- and I'm talking the  
 2 reapportionment committee.  
 3 Q. Uh-huh.  
 4 A. -- prior to submitting that map and at  
 5 least let's have a meeting and go over the pros  
 6 and cons and -- and, you know, about what was  
 7 going to take place. But the reapportionment  
 8 committee never had that kind of meeting. So we  
 9 didn't have an opportunity to address that until  
 10 you got to committee.  
 11 Q. Uh-huh.  
 12 A. And on those committees, everybody on  
 13 reapportionment wasn't necessarily on those  
 14 committees. So you didn't even have the full  
 15 committee that voted for the bill to be moved from  
 16 the, you know, committee process to the overall  
 17 floor.  
 18 (Defendant's Exhibit 3 was marked  
 19 for identification and copy of  
 20 same is attached hereto.)  
 21 Q. (BY MR. WALKER:) Let me show you what  
 22 I've marked as Defendant's Exhibit 3. And that's,  
 23 I'll represent to you, the Remedial Plan 3, the

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1 Court-Ordered Plan. And this is, I believe, an  
 2 extract from the second amended complaint.  
 3 Do you recognize that as the  
 4 Court-Ordered Plan?  
 5 A. It resembles -- I don't -- I don't  
 6 necessarily -- I will accept that, but I don't --  
 7 that it is. But I don't recognize it to the point  
 8 to see the -- to point to the small  
 9 distinctions --  
 10 Q. (BY MR. WALKER:) Fair enough.  
 11 A. Yes.  
 12 Q. It's hard to keep them straight; I agree.  
 13 With you.  
 14 MR. BLACKSHER: Dorman, this is -- you  
 15 said it was from the second amended complaint?  
 16 MR. WALKER: Am I wrong on that?  
 17 MR. BLACKSHER: Yeah. It's -- in  
 18 Milligan. In the Milligan docket number.  
 19 MR. WALKER: You're right. Okay.  
 20 Q. Anyway, it's the Remedial Plan Number 3,  
 21 which --  
 22 A. Is this the plan we're under now?  
 23 Q. That is the plan we're under now.

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1 A. That we're -- that they're running under  
 2 right now?  
 3 Q. Yes, sir.  
 4 A. Okay.  
 5 Q. Is there anything about this map that you  
 6 don't like?  
 7 A. Well, I -- just Jefferson County being  
 8 split. That's my primary concern. They way we're  
 9 split up like that.  
 10 Q. Anything else?  
 11 A. Similar concerns, you know, with  
 12 Tuscaloosa, as I mentioned. But what I do like is  
 13 that it does give us an opportunity district.  
 14 It's the one if I -- yeah, I got it right. It's  
 15 the opportunity. Does give us an opportunity  
 16 district.  
 17 I don't -- you know, I think that the  
 18 plan that Senator Singleton put forward and I did  
 19 too does a better job of keeping the Black Belt  
 20 together.  
 21 Q. Uh-huh.  
 22 A. So those would be the only things about  
 23 that. But I -- you know, I'm still in favor of

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1 this plan.  
 2 Q. The complaint says that you live in  
 3 Congressional District 7 under this plan. Is that  
 4 correct?  
 5 A. Yes, I do.  
 6 Q. Okay. Okay. Does this map provided the  
 7 relief that you wanted in filing the lawsuit?  
 8 A. Not all of it.  
 9 Q. Okay.  
 10 A. Not all of it. Because of the  
 11 constitutional issues with the whole county. And,  
 12 of course, you still, you know, got the  
 13 possibility of some gerrymandering in there.  
 14 Q. And what do you understand to be the  
 15 constitutional issue involving whole counties?  
 16 A. Well, we're supposed to keep the counties  
 17 whole as possible. And in terms of the  
 18 communities of interest, in terms of its  
 19 boundaries, that we'll make an effort to do that.  
 20 And we showed with the plans that we present it  
 21 can be done.  
 22 Q. Uh-huh.  
 23 A. That's the key thing. We showed it could

<p style="text-align: right;">Page 129</p> <p>1 be done. And in showing that, you know, the fact</p> <p>2 that they take it your primary focus is providing</p> <p>3 that all counties are whole --</p> <p>4 Q. Uh-huh.</p> <p>5 A. -- as many as you can without any</p> <p>6 interruption or deviation from its boundaries.</p> <p>7 Q. When you refer to a constitutional</p> <p>8 requirement to keep counties whole, is that</p> <p>9 requirement in the federal Constitution or in the</p> <p>10 state Constitution?</p> <p>11 A. I would -- I'm not certain if it's in</p> <p>12 one -- which one specifically or both.</p> <p>13 Q. Uh-huh.</p> <p>14 A. Because I'm under oath, and I just don't</p> <p>15 want say -- to be inaccurate.</p> <p>16 Q. Yes.</p> <p>17 A. So -- but, you know, I could easily as</p> <p>18 you -- you probably would, I guess, smile and say</p> <p>19 that give me about ten minutes and I could</p> <p>20 research it. That's right.</p> <p>21 Q. That's fine.</p> <p>22 If Alabama has two Congressional</p> <p>23 districts in which black voters can elect their</p>	<p style="text-align: right;">Page 131</p> <p>1 functionality study of how people vote, you know,</p> <p>2 and all those other factors that we stressed were</p> <p>3 our concerns.</p> <p>4 Q. If Alabama can draw a Congressional</p> <p>5 district with a black majority -- do you believe</p> <p>6 that if Alabama can draw a Congressional district</p> <p>7 with a black majority, it should do that?</p> <p>8 A. Well, I -- not at the risk of not having</p> <p>9 an opportunity district as well.</p> <p>10 Q. Okay.</p> <p>11 A. And I think it can be done and we have an</p> <p>12 opportunity district as well. We can't have</p> <p>13 the -- it won't be the 65 or 70 percent --</p> <p>14 Q. No.</p> <p>15 A. -- but I think that we could do that,</p> <p>16 especially, once again, you look at the</p> <p>17 functionality studies.</p> <p>18 Q. Do you know Representative Sewell?</p> <p>19 A. I do.</p> <p>20 Q. Have you contacted her about issues</p> <p>21 related to your neighborhood or your community or</p> <p>22 anything like that?</p> <p>23 A. No, because most of them I take care of</p>
<p style="text-align: right;">Page 130</p> <p>1 candidate of choice, would that plan address your</p> <p>2 concerns even if you did not happen to live in one</p> <p>3 of those districts?</p> <p>4 A. It would address most of my concerns, but</p> <p>5 it couldn't address all of them because I want to</p> <p>6 keep Jefferson County whole.</p> <p>7 Q. Okay. That's --</p> <p>8 A. That's -- you know, I think that it</p> <p>9 should be whole. And I've given you my reasons</p> <p>10 why, you know, without --</p> <p>11 Q. You have.</p> <p>12 A. -- without saying it.</p> <p>13 Q. Is it a goal of yours in this litigation</p> <p>14 to get a second Democrat elected to Congress?</p> <p>15 A. No. My goal is just to have a second</p> <p>16 opportunity that, you know, the voters,</p> <p>17 particularly African American voters, can elect</p> <p>18 the person of their choice. Just have an</p> <p>19 opportunity. It's not a guarantee. But --</p> <p>20 Q. I know.</p> <p>21 A. -- every good reasonable opportunity</p> <p>22 considering the makeup -- you know, the</p> <p>23 percentages in the district, considering the</p>	<p style="text-align: right;">Page 132</p> <p>1 myself.</p> <p>2 Q. That's the advantage of being a senator?</p> <p>3 A. Yeah, I take care of them myself most --</p> <p>4 I try to, anyway, with my colleagues' help. Now,</p> <p>5 I don't want anybody thinking I do it all by</p> <p>6 myself. I don't. They have to help me. But with</p> <p>7 their help.</p> <p>8 Q. Do you have any information -- do you</p> <p>9 know what a racial appeal in a campaign is?</p> <p>10 A. Uh-huh.</p> <p>11 Q. Do you have any information about racial</p> <p>12 appeals or appeals to race being made in political</p> <p>13 campaigns in Alabama?</p> <p>14 A. Oh, oh. Now I know what you're saying.</p> <p>15 Q. Okay.</p> <p>16 A. Running a race-based campaign.</p> <p>17 Q. Yeah.</p> <p>18 A. That's what you -- am I correct, what I'm</p> <p>19 saying?</p> <p>20 Q. Yes, sir.</p> <p>21 A. Oh, we got a history in this state, you</p> <p>22 know, of doing that.</p> <p>23 Q. Yeah.</p>

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1 A. And, you know, I mean, it's --  
 2 remember -- what his name? Willie Brown or Willie  
 3 Horton or whichever one --  
 4 Q. Willie Horton. Yes.  
 5 A. Yeah. So I mean, we -- we go way back  
 6 with --  
 7 Q. Was that Dukakis?  
 8 A. I don't know.  
 9 Q. I mean, I remember it --  
 10 A. But I know we --  
 11 Q. Yeah.  
 12 A. We had a similar situation in this state.  
 13 If you -- you may or may not recall back -- it was  
 14 back several years ago that we -- we were showing  
 15 pictures of some of these candidates. I can't  
 16 remember the race. But it was a -- on the  
 17 commercials and the ads. And, you know, it's -- I  
 18 can't -- you know, I can't recall them, but I'm  
 19 going to say it this way. You know, it's -- we  
 20 have -- there are code words that people  
 21 understand that they are talking about race.  
 22 Let me just share this to you and -- you  
 23 didn't ask me, but I'm going to just share it with

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1 you.  
 2 Q. Okay.  
 3 A. I'm a product of segregation and  
 4 integration.  
 5 Q. Yeah.  
 6 A. We're the -- we are the ones who  
 7 integrated at age 17, the first integration from  
 8 Jim Crow. So I know -- I know it when I see it.  
 9 That's the best way I can tell you.  
 10 Q. Uh-huh.  
 11 A. I -- you are looking at the ones who  
 12 integrated right here.  
 13 Q. Right. Yes.  
 14 A. And so I know as I sit here, I know what  
 15 I see.  
 16 Q. Yeah.  
 17 A. You know.  
 18 Q. If you can, what was the last political  
 19 campaign in Alabama that you can recall for which  
 20 you thought there was a racial appeal or code  
 21 words or anything like that?  
 22 A. I'd have to go back and think.  
 23 Q. Okay.

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1 A. I just can't call up.  
 2 Q. That's fine.  
 3 A. You know, because I want to be accurate  
 4 when I say. I can't call that up right now.  
 5 Q. I've got some questions here asking you  
 6 about when you registered to vote and all that.  
 7 But I'm fairly certain you're registered to vote.  
 8 A. I am.  
 9 Q. So we're going to skip over that.  
 10 Are you aware of anybody in recent  
 11 history to your knowledge having difficulty  
 12 registering to vote in Alabama?  
 13 A. Well, I don't know people's specific  
 14 names, but I'm aware of people not being able to  
 15 get to where they need to to register to vote.  
 16 They need some help and some assistance. You  
 17 know, and --  
 18 Q. Getting to register?  
 19 A. Getting to register or getting the  
 20 information there. They need some help with  
 21 understanding --  
 22 Q. Okay.  
 23 A. -- just how they need to fill that out.

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1 And, of course, you know, if you've been -- you're  
 2 not charged to --  
 3 Q. Yeah.  
 4 A. -- but if you've been keeping up with  
 5 what's been happening with us in the legislature,  
 6 we've just made that considerably more difficult  
 7 in the fact that you can't hire anybody to go help  
 8 somebody go do something. It's got to be strictly  
 9 voluntary. And that in itself is -- you know, is  
 10 a big ask to ask people in these hundred degrees  
 11 just kind of go out there on your own. Some  
 12 people do, but it's fewer people that would do  
 13 that because now, you can't hire people to go out  
 14 to do stuff like that.  
 15 Q. Right. And you're referring to -- I  
 16 can't think of the name of the law, but it was a  
 17 law that was passed in the last session that  
 18 relates to handling of absentee ballots and  
 19 assisting people with casting a vote?  
 20 A. That's correct.  
 21 MR. BLACKSHER: Object to form.  
 22 Q. (BY MR. WALKER:) Is all your family  
 23 registered to vote?

<p style="text-align: right;">Page 137</p> <p>1 A. Yes.</p> <p>2 Q. And I'm going to assume just because it's</p> <p>3 you, but I'll ask anyway. Do you vote in all</p> <p>4 elections?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Primary?</p> <p>7 A. Yes.</p> <p>8 Q. General?</p> <p>9 A. Yes.</p> <p>10 Q. Runoff?</p> <p>11 A. Yes.</p> <p>12 Q. Special?</p> <p>13 A. Yes.</p> <p>14 Q. Where is your polling place?</p> <p>15 A. 6th Avenue Baptist Church.</p> <p>16 Q. Is that?</p> <p>17 A. The one across the street from Elmwood</p> <p>18 Cemetery.</p> <p>19 Q. Okay. Is that for federal, state, and</p> <p>20 municipal?</p> <p>21 A. I think that's right.</p> <p>22 Q. Okay.</p> <p>23 A. I think that's the only place I have been</p>	<p style="text-align: right;">Page 139</p> <p>1 Q. Uh-huh.</p> <p>2 A. I'm a believer in diversity.</p> <p>3 Q. Uh-huh.</p> <p>4 A. Everybody ought to have an opportunity.</p> <p>5 Fair opportunity.</p> <p>6 And, of course, you know, how well</p> <p>7 they -- their position on crime.</p> <p>8 Q. How well, in your view, has the</p> <p>9 legislature done recently in supporting education?</p> <p>10 A. I think that -- I won't talk about</p> <p>11 prospective forward. I'll just talk about right</p> <p>12 at this moment now?</p> <p>13 Q. Right at this moment?</p> <p>14 A. I don't think that we've done the best</p> <p>15 job that we could do in supporting public</p> <p>16 education.</p> <p>17 Q. Give -- give --</p> <p>18 A. And public education brings in urban,</p> <p>19 particularly a lot of urban -- and rural</p> <p>20 education. But it brings in a lot of minority</p> <p>21 students.</p> <p>22 Q. Right.</p> <p>23 A. We don't -- we haven't provided equitable</p>
<p style="text-align: right;">Page 138</p> <p>1 going.</p> <p>2 Q. Is that a convenient place for you to</p> <p>3 vote?</p> <p>4 A. It is.</p> <p>5 Q. Okay. Any trouble voting there?</p> <p>6 A. No.</p> <p>7 Q. Have you ever voted absentee in Alabama?</p> <p>8 A. I can't recall.</p> <p>9 Q. Okay.</p> <p>10 A. I can't recall.</p> <p>11 Q. When you decide which candidate you</p> <p>12 personally support, is race a significant</p> <p>13 consideration?</p> <p>14 A. The issues. The issues. Their position.</p> <p>15 Q. Race is not?</p> <p>16 A. Uh-huh. Their position on the issues is</p> <p>17 my concern.</p> <p>18 Q. What are the issues that drive your</p> <p>19 selection of a candidate?</p> <p>20 A. Well, number one is how well they support</p> <p>21 education. How well they support public</p> <p>22 education. How well they support job creation.</p> <p>23 How well they support diversity.</p>	<p style="text-align: right;">Page 140</p> <p>1 resources to those urban people and to the</p> <p>2 minority district -- minority school districts</p> <p>3 that need that. And -- because the economics are</p> <p>4 not equal in all communities in this state.</p> <p>5 So just to have a process where you say</p> <p>6 10 -- I might have said this earlier. Where you</p> <p>7 have 10 mills, you know, and then that sounds good</p> <p>8 on paper, but 10 mills will produce, this</p> <p>9 system -- I'm just going to pick an amount.</p> <p>10 Q. Yeah.</p> <p>11 A. \$100. 10 mills -- same difference. That</p> <p>12 10 mills produce this system \$160.</p> <p>13 That's the problem. And so actually,</p> <p>14 this past legislative session, I put in a bill.</p> <p>15 We have 206 -- I could be wrong. Give or take on</p> <p>16 or two -- schools that are failing schools.</p> <p>17 Q. Uh-huh.</p> <p>18 A. I put in a bill that would provide that</p> <p>19 we give each one of those schools \$1 million</p> <p>20 upfront now. That's \$206 million.</p> <p>21 And I took that because I've modeled the</p> <p>22 approach of helping those schools behind Govern</p> <p>23 lvey. You remember she had those -- I forgot wha</p>



<p style="text-align: right;">Page 141</p> <p>1 it's called. Those -- not -- where she had 15          2 schools --          3 Q. Right.          4 A. -- and she provided a million dollars for          5 each one of them.          6 Q. Uh-huh.          7 A. Two of them are in my district.          8 Q. Uh-huh.          9 A. Center Street and Hayes. And that money          10 rose those -- because you could get the help, the          11 aides and all that. It brought those schools from          12 being failing schools up out of it.          13 So she's already set the predicate.          14 Q. Yeah.          15 A. And I followed her predicate for 206          16 schools.          17 Well, I met resistance. And that's what          18 I meant. And a lot of those schools --          19 Q. Uh-huh.          20 A. -- Most of them are in urban areas, would          21 affect African Americans and poor people in the          22 rural areas.          23 Now, as a result of that, we're</p>	<p style="text-align: right;">Page 143</p> <p>1 A. Well, we didn't -- we were in court --          2 Q. Yeah.          3 A. -- with that because it wasn't -- it was          4 not no way equitable in the past.          5 Q. Uh-huh.          6 A. And this system is not equitable. You          7 know.          8 Q. Did the implementation of the Foundation          9 system, was that beneficial to black students?          10 A. From where they were, it is.          11 Q. Yeah.          12 A. But not to where it should be.          13 Q. Okay.          14 A. And that's why I stepped in to do what          15 you see I'm trying to do now.          16 Q. And are you hopeful?          17 A. I'm hopeful. Because at least I'm          18 getting some recognition from my colleagues that          19 yeah, we got to do something else. The money is          20 not getting to the schools and the kids who need          21 it the most. So I'm optimistic that we're going          22 to get that worked out.          23 Q. So with that in mind, what grade would</p>
<p style="text-align: right;">Page 142</p> <p>1 beginning to meet now. So it took that whole          2 session to get everybody on board to try to make          3 some adjustments -- although I think my plan is          4 the best one -- to give them that money under some          5 supervision. But we are meeting now and in          6 August getting ready to have another meeting.          7 I was fortunate enough to be on the          8 foundation, creation of the Foundation Program.          9 Q. Oh, good. Okay.          10 A. See. So I'm one of the pioneers.          11 Q. Uh-huh.          12 A. That, you know, Governor Fob James          13 selected me --          14 Q. Just tell the Court briefly what the          15 Foundation Program did.          16 A. It's the funding for education. Per          17 pupil. Based on the student population.          18 Primarily the student population.          19 Q. Uh-huh.          20 A. There are certain pots for certain          21 specialties but the student population itself.          22 Q. How was that an improvement over the          23 previous funding system?</p>	<p style="text-align: right;">Page 144</p> <p>1 you give the legislature for education?          2 A. When? You talking about this session          3 right here?          4 Q. I'm talking about right now as we sit          5 here and you look back over what the legislature's          6 done.          7 A. In certain areas, they'll get good          8 grades. Certain areas they wouldn't. So I guess          9 I'd have to say it that way.          10 Q. Yeah.          11 A. You know the creation of the math program          12 that we did --          13 Q. Uh-huh. Uh-huh.          14 A. -- they get a very good grade. I'd say          15 a B.          16 Q. Uh-huh.          17 A. They get a good grade on that.          18 Q. Uh-huh.          19 A. But the way that we initially handled          20 the -- what do they call it? The reading. The          21 reading --          22 Q. The reading program?          23 A. The -- what do they call it? Literacy.</p>

<p style="text-align: right;">Page 145</p> <p>1 Q. Literacy, yeah.</p> <p>2 A. The way we handled that, at least in the</p> <p>3 past, I think we get a D.</p> <p>4 Q. Has that been corrected?</p> <p>5 A. I mean -- well, it's yes and no.</p> <p>6 Because, you know, see, we had COVID.</p> <p>7 Q. Yeah.</p> <p>8 A. And they still wanted to test these kids</p> <p>9 whether they're going to flunk them or not.</p> <p>10 Q. Yeah.</p> <p>11 A. We had COVID.</p> <p>12 Q. Yeah.</p> <p>13 A. Hadn't no one been to school a year and a</p> <p>14 half or two years, and you're getting ready to</p> <p>15 test whether they're going to stay in the third</p> <p>16 grade or not.</p> <p>17 So I passed the bill the first time --</p> <p>18 the legislature passed -- but it was not signed</p> <p>19 into law. And then when we got to the last year,</p> <p>20 I passed it again, and it was signed into law but</p> <p>21 only for one year. So now this year coming up is</p> <p>22 where the testing is going to take place.</p> <p>23 So now we got the same situation with</p>	<p style="text-align: right;">Page 147</p> <p>1 will help us to move in that direction. I'm</p> <p>2 hoping so.</p> <p>3 Q. What grade would you give the legislature</p> <p>4 for opportunities for employment?</p> <p>5 A. Oh, I think we -- we're moving in --</p> <p>6 we're probably a B.</p> <p>7 Q. Okay.</p> <p>8 A. You know, we got that Work Alabama.</p> <p>9 Q. Yeah.</p> <p>10 A. Yeah, I think that that's a very good</p> <p>11 program. I think it's very good.</p> <p>12 Q. Would you say that the Democratic party</p> <p>13 is more responsive to issues that are important to</p> <p>14 black Alabamians than the Republican party?</p> <p>15 A. Are they more responsive to what kind of</p> <p>16 issues did you say?</p> <p>17 Q. Issues of importance to black Alabamians.</p> <p>18 A. I think they have a better understanding,</p> <p>19 I will say that. So in that, I think that that</p> <p>20 would be more of a priority for them. Let me put</p> <p>21 it to you that way. It would be more of a</p> <p>22 priority.</p> <p>23 Q. Are there issues of common ground between</p>
<p style="text-align: right;">Page 146</p> <p>1 kindergarten. They coming to kindergarten and no</p> <p>2 passing those steps, then they're going to put</p> <p>3 them in kindergarten if they're 6 years old.</p> <p>4 Q. Uh-huh.</p> <p>5 A. See? So you see what I'm getting at now.</p> <p>6 It's just that no, if you put grades on -- that</p> <p>7 doesn't speak well for what we've been doing if we</p> <p>8 got kids who are in the third grade but the</p> <p>9 process of handling it needs some modification to</p> <p>10 take in consideration COVID and teacher shortages.</p> <p>11 Q. Right.</p> <p>12 A. You've got substitute teachers who are</p> <p>13 permanent substitutes who are there for the whole</p> <p>14 year. And so, you know, all this should be taken</p> <p>15 into consideration and it's not. That's the part.</p> <p>16 It's not just throwing money.</p> <p>17 Q. Yeah.</p> <p>18 A. You know. You --</p> <p>19 Q. Are you -- did I cut you off?</p> <p>20 A. No. Go ahead.</p> <p>21 Q. Are you hopeful for positive change in</p> <p>22 the legislature coming up?</p> <p>23 A. I'm hoping so. I'm hoping this committee</p>	<p style="text-align: right;">Page 148</p> <p>1 Republicans and Democrats in Alabama?</p> <p>2 A. Yeah. I won't say necessarily parties.</p> <p>3 Q. Yeah.</p> <p>4 A. But I would say individual Republicans.</p> <p>5 But yes, I would say that's the case. I mean, you</p> <p>6 know, it depends on what the issues are.</p> <p>7 Q. What would be the issues?</p> <p>8 A. Business.</p> <p>9 Q. Business?</p> <p>10 A. Yes. I think pretty much, you know,</p> <p>11 you --</p> <p>12 Q. Uh-huh.</p> <p>13 A. You have -- closer on one accord as it</p> <p>14 relates to business issues. And probably crime to</p> <p>15 a certain degree, those in particular --</p> <p>16 Q. Yeah.</p> <p>17 A. -- you probably would, because nobody</p> <p>18 wants crime.</p> <p>19 Q. What about education moving forward?</p> <p>20 A. I'm concerned that it's not as much</p> <p>21 concern from the majority party about public</p> <p>22 education. You know, you got -- you know, anytime</p> <p>23 you take -- for instance, you've got -- they want</p>

<p style="text-align: right;">Page 149</p> <p>1 to -- you've got -- you have a home school                  2 process.                  3 Q. Uh-huh.                  4 A. -- where they want -- watch this one.                  5 They don't want no part of public education.                  6 Don't like it. They criticize it. But, by the                  7 way, we want the ability in the statute to be able                  8 to enroll in the art program at the same public                  9 school --                  10 Q. Right.                  11 A. -- that we can't stand and won't go.                  12 Q. Yeah. Okay.                  13 A. And now you -- and I'm going to just say                  14 it from an administrative side. I ain't going to                  15 even say it from the other side. Administrative,                  16 how is the school who's going to be liable for                  17 this student that only comes one time who is not                  18 enrolled in the school but they're going to be                  19 responsible for the student? You can't be if                  20 they're not under the -- governed by enrolling in                  21 the school itself. Because getting in the program                  22 is not enrolling in the school. They just want to                  23 enroll into the class. So that's -- that's what I</p>	<p style="text-align: right;">Page 151</p> <p>1 know, as far as the issues. He didn't --                  2 Q. Right.                  3 A. He didn't try to alienate anybody off or                  4 anything. And that's what I admire about him.                  5 Q. How has that changed for the current                  6 leadership?                  7 A. Well, I haven't heard what their                  8 positions are, their approach, because I haven't                  9 been to any of their meetings. And so I just -- I                  10 don't know what, you know, the new leadership is                  11 trying to do in that regard.                  12 Q. Under the new leadership post-John                  13 England, what's your perception of the strength of                  14 the Alabama Democratic Party?                  15 A. Well, it's not so much the strength of                  16 the party. I just think that it is the general                  17 our state's makeup is a little different. I think                  18 some of the issues. And I think that has a lot to                  19 do with it.                  20 I think the sensitivity is low to people                  21 who need the most. That's the best way I can say                  22 it. I just think the sensitivity. Having been                  23 there this many years --</p>
<p style="text-align: right;">Page 150</p> <p>1 mean.                  2 Q. I'm trying to speed this up.                  3 A. Okay.                  4 Q. Who are the current leaders of the                  5 Alabama Democratic Party?                  6 A. I can't recall that lady's -- I think the                  7 lady -- I can't recall the lady's name.                  8 Q. Tabitha Isner?                  9 A. That may be it.                  10 Q. Do you know any other leaders of the                  11 party right now?                  12 A. No. They changed over. I remember                  13 John -- Representative England was in charge of                  14 it.                  15 Q. Right.                  16 A. But I don't know -- because I'm not on                  17 the executive committee. So I don't know.                  18 Q. How would you describe the party when it                  19 was under Representative England as opposed to the                  20 party as it is now?                  21 A. Well, I don't know about it now. I would                  22 say that he tried to have a large enough umbrella                  23 that everybody could get under that umbrella, you</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. The party sensitivity?                  2 A. Well, I just think that the majority, who                  3 ultimately make those decisions, lack some of the                  4 necessary sensitivity to things that's happening                  5 to people out there. Just basic things. People,                  6 you know, they're trying to make ends meet.                  7 They're trying to -- you know, we talk about                  8 providing funds for education --                  9 Q. Yeah.                  10 A. -- yet we want to turn around and put 100                  11 to 400 million into the Choice Act and yet all I                  12 asked for was 206 million to help every -- every                  13 failing school.                  14 Q. Yeah.                  15 A. But we can vote to put the 100 with a                  16 maximum possible 400 million for people who want                  17 to just take the money, say I don't want to go to                  18 this school. I want to go over here, and then                  19 ignore the people who don't have a choice, who                  20 have a need --                  21 Q. Uh-huh.                  22 A. -- and the school is suffering because it                  23 doesn't have the resources. That's the concern.</p>

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1 Q. What's the function of a political party?  
 2 To run candidates?  
 3 A. Well, I won't just say only to -- only to  
 4 run candidates. I would think the function of a  
 5 political party is to put support behind certain  
 6 issues that will affect people.  
 7 Q. And -- I'm sorry.  
 8 A. You know, and I just -- you know, I see  
 9 that more than anything, that that's what it  
 10 really is.  
 11 Q. And is one of the primary ways a  
 12 political party does that by running candidates  
 13 who support those issues?  
 14 A. Yeah, I think they would support  
 15 candidates --  
 16 Q. Yeah.  
 17 A. -- who run -- who support those issues.  
 18 Whether they were running them or not.  
 19 Q. Yes.  
 20 A. You know, I think if the candidate  
 21 supports that issue, then I think that they -- you  
 22 know, they would push forward.  
 23 Q. Has in recent history the Democratic

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1 party done a good job of fielding strong  
 2 candidates for statewide election?  
 3 A. Well, in some situations, yes. And then  
 4 we have some that, you know, not necessarily. You  
 5 know, it varies.  
 6 Q. Yeah.  
 7 A. I think both parties have done that  
 8 though, you know, in terms of strong candidates  
 9 or --  
 10 Q. Are you -- did I interrupt you? I'm  
 11 sorry.  
 12 A. No, no. I'm through.  
 13 Q. Are you aware or do you recall that in  
 14 2022, there were elections for state officials  
 15 where the Libertarian party had candidates on the  
 16 ballot to challenge Republicans but the Democrats  
 17 didn't?  
 18 MR. BLACKSHER: Object to form.  
 19 A. I -- I don't -- I don't recall a memory,  
 20 but I wouldn't question -- you know, I wouldn't  
 21 take issue with you what you just said.  
 22 Q. (BY MR. WALKER:) Do you know who Yolanda  
 23 Flowers is?

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1 A. Yes.  
 2 Q. Who is she?  
 3 A. Lady that ran for governor.  
 4 Q. Did she have any qualification for that  
 5 position in your opinion?  
 6 A. Yeah. I think she was qualified.  
 7 Q. Okay.  
 8 A. I mean, you know, it's unfortunate we  
 9 don't have orientation or a pre-class to be a  
 10 politician. So it's not something she should have  
 11 gone and gotten versus that. I think her just  
 12 life experiences probably would qualify her.  
 13 Q. Do you know who Ruth Page Nelson is?  
 14 A. No.  
 15 Q. Do you know who Will Boyd is?  
 16 A. Yeah.  
 17 Q. Who is he?  
 18 A. I think he ran for what? Lieutenant  
 19 governor?  
 20 Q. Senate.  
 21 A. Senate.  
 22 Q. In '22?  
 23 A. Senate 2022.

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1 Q. Did you know him before he ran?  
 2 A. I knew him but not personally.  
 3 Q. Has he a previous background in politics?  
 4 A. He might have run for something else.  
 5 I'm not sure. I don't know.  
 6 Q. Do you know how well funded his campaign  
 7 was?  
 8 A. No, I don't.  
 9 Q. Do you know who Wendell Major is?  
 10 A. I do.  
 11 Q. Who is he?  
 12 A. He's the -- I think I got it right. He's  
 13 the Sheriff of Tarrant now. Tarrant City Sheriff.  
 14 Q. Ran for attorney general in '22?  
 15 A. Yes.  
 16 Q. Do you know who Pamela Laffitte is?  
 17 A. I think I do. I've heard that name. I  
 18 think I know. I'm not sure. I can't visualize  
 19 right now, but I think I do.  
 20 Q. Do you know if white voters in Alabama  
 21 usually prefer Republican candidates?  
 22 A. I -- prefer in certain -- certain areas  
 23 of the state maybe. You know, I wouldn't -- I



<p style="text-align: right;">Page 157</p> <p>1 wouldn't use that as a blanket statement, for</p> <p>2 instance, and say up here. Because as I said --</p> <p>3 Q. Jefferson County?</p> <p>4 A. Uh-uh. Because, once again, the</p> <p>5 functionality study going to show you.</p> <p>6 Q. Yeah.</p> <p>7 A. Yeah, it's just going to show you. You</p> <p>8 know, regardless of what opinion, I mean, the</p> <p>9 study's going to speak for itself.</p> <p>10 Q. Do you think that white voters support</p> <p>11 the Republican party -- in general. We're</p> <p>12 speaking in terms of generalities here, of</p> <p>13 course -- because of that party's view on issues</p> <p>14 with which they agree?</p> <p>15 A. I think a big part of it -- I can't put</p> <p>16 the numbers and things, but I think a big part of</p> <p>17 it is race.</p> <p>18 Q. Explain to me.</p> <p>19 A. Is race. Well, I just -- I just think</p> <p>20 the -- let me try to give you an example.</p> <p>21 In part, you know, you have people</p> <p>22 campaigning. And you have people campaigning who</p> <p>23 their campaign is based on racial rhetoric.</p>	<p style="text-align: right;">Page 159</p> <p>1 A. To see whether or not. You know the</p> <p>2 labels that we give them, you've got to have</p> <p>3 independent voters. You know.</p> <p>4 Q. What has the Democratic Party done or is</p> <p>5 doing now to attract white voters, if anything?</p> <p>6 MR. BLACKSHER: Object to form.</p> <p>7 Go ahead.</p> <p>8 A. I don't know per se what the party is</p> <p>9 doing.</p> <p>10 Q. (BY MR. WALKER:) Uh-huh.</p> <p>11 A. I don't know specifically. I couldn't</p> <p>12 tell you if they've got this program or if there's</p> <p>13 an outreach program or -- as a party, I don't</p> <p>14 know, you know, what programs they may have</p> <p>15 instituted to do that.</p> <p>16 Q. What does it mean to you to have a voice</p> <p>17 in the political process?</p> <p>18 A. That -- that I can be heard as it relates</p> <p>19 to those issues in the process and that what I --</p> <p>20 say that if I -- I make a solid case for, it will</p> <p>21 have an impact on as we move forward and what we</p> <p>22 do to address to help people no matter what the</p> <p>23 winner is and not just have an opportunity to sit</p>
<p style="text-align: right;">Page 158</p> <p>1 Q. Can you --</p> <p>2 A. And you have -- you have that having an</p> <p>3 impact on how the voters you just asked me about,</p> <p>4 some of them, view a candidate that they may not</p> <p>5 really even know much about.</p> <p>6 Q. Can you give me some examples, Senator</p> <p>7 Smitherman?</p> <p>8 A. Not right off, I can't.</p> <p>9 Q. Okay. Can black congressional candidates</p> <p>10 win under the Singleton Plan, the Smitherman Plan,</p> <p>11 or the Court-Ordered Plan without the support of</p> <p>12 white voters?</p> <p>13 A. Uh-uh. You're going to have to --</p> <p>14 maybe -- maybe in 7. You know, that close 7,</p> <p>15 around 50, 56 percent.</p> <p>16 Q. Yeah.</p> <p>17 A. Maybe there. But, no, you're going to</p> <p>18 have to have white voters in these opportunity</p> <p>19 districts. And that's why you -- once again. I</p> <p>20 know I'm going back to the same statement, but</p> <p>21 that's why you have to look at the functionality</p> <p>22 report.</p> <p>23 Q. Right.</p>	<p style="text-align: right;">Page 160</p> <p>1 up there and say what I think ought to be done and</p> <p>2 show it. And sort of not a token opportunity but</p> <p>3 a very serious opportunity. And that's what we go</p> <p>4 back to what we're doing here. I keep talking</p> <p>5 about the functionality study.</p> <p>6 Q. Right.</p> <p>7 A. You know, if you don't have an</p> <p>8 opportunity district, first of all, you're not --</p> <p>9 you know, that's just -- it's nice to stand up and</p> <p>10 say all them good things, whatever, but you're not</p> <p>11 going to have a reasonable opportunity to affect</p> <p>12 them. But if the district is of such that, as we</p> <p>13 say, is an opportunity district, you're going to</p> <p>14 have a shot at it. You're going to have an</p> <p>15 opportunity to do that. And I think that that's</p> <p>16 what's critical.</p> <p>17 Q. If there's an election and the issues</p> <p>18 that are important to, let's just say, the black</p> <p>19 community are discussed in the election but,</p> <p>20 nevertheless, the black candidate of choice loses,</p> <p>21 under those circumstances, would you feel like</p> <p>22 you've had a voice in the election?</p> <p>23 MR. BLACKSHER: Object to form.</p>

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1 A. Say that again for me again, please.  
 2 Q. (BY MR. WALKER:) Yeah. If your  
 3 candidate loses but the issues that are important  
 4 to you have been discussed in the election, would  
 5 you say that, notwithstanding the loss, you've had  
 6 a voice in the objection?  
 7 MR. BLACKSHER: Object to form.  
 8 A. Uh-uh. Uh-uh. A voice is not being able  
 9 to just only say. Remember I said that that -- I  
 10 guess the best words I can use is unless I can  
 11 have an opportunity to really have an --  
 12 opportunity -- really have a impact, that's just  
 13 tokenism.  
 14 Q. (BY MR. WALKER:) Okay.  
 15 A. Yeah. I mean, that's -- that's not --  
 16 it's -- you know, it's -- nobody, you know -- it's  
 17 not -- this is not -- and I'm not saying what  
 18 we're doing here, but I'm just talking about --  
 19 Q. Right.  
 20 A. -- what we're trying to do with the  
 21 opportunity district. This is not to show. This  
 22 is giving an opportunity for people to really have  
 23 an impact. And I think that that's -- that's it

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1 in part. You know, whether or not the elements  
 2 are there that you're going to have a reasonable  
 3 enough opportunity to impact it. You may not get  
 4 everything you want. You know, it may not be  
 5 specifically the way you sitting up there  
 6 saying --  
 7 Q. Yeah.  
 8 A. -- but when you walk out of there, it's  
 9 for the better. If you bringing things to the  
 10 table for the better, then it changes. You know,  
 11 it was just like what I said about the 206 --  
 12 Q. I got you.  
 13 A. I mean, yeah, it's some people who were  
 14 concerned for other reasons about just turning  
 15 a-loose the million dollars apiece to everybody.  
 16 But the fact that they allowed it to have enough  
 17 impact that, okay, we need to have this committee  
 18 together and look seriously at this and see what  
 19 we can do to address that.  
 20 That's what you want. You know, you  
 21 want an environment where you can have a shot, you  
 22 have a chance --  
 23 Q. Uh-huh.

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1 A. -- a fair, reasonable opportunity to do  
 2 that.  
 3 Q. Do you believe that the current districts  
 4 in which the candidate preferred by African  
 5 Americans -- in Congressional District 7 and  
 6 District 2 -- may or may not be elected because  
 7 they're opportunity districts, do you believe that  
 8 those districts give black Alabamians a voice in  
 9 the political process?  
 10 A. Yes, I do.  
 11 Q. Okay.  
 12 A. I do. I do.  
 13 Q. About to wrap up.  
 14 A. Okay.  
 15 Q. Let me ask you a few more questions.  
 16 You've talked about you were there when  
 17 desegregation happened. And I'll just say I was  
 18 there too although -- it happened in Cloverdale as  
 19 well. But are things better today -- I'm not  
 20 saying are things perfect today, but are things  
 21 better today with regard to race relations than  
 22 when you grew up?  
 23 A. Well, take -- take politics out, I would

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1 say it's -- it's -- it's probably -- yeah, I would  
 2 say the communication and the interaction of  
 3 people is a lot better now. That's why I -- I  
 4 keep going back to it, but the functionality  
 5 study. I mean, it shows that there are people  
 6 that do that.  
 7 Q. Right.  
 8 A. And then, you know, I've been able to  
 9 make a comparison and an analysis, you know, from  
 10 the 1970s until now, you know, because -- when I  
 11 was in college.  
 12 Q. Uh-huh.  
 13 A. You know, I'll just say it to you like  
 14 this. I was in an all-white fraternity.  
 15 Q. Oh. Okay.  
 16 A. All my fraternity brothers look like you.  
 17 Q. Yeah. They were bald?  
 18 A. Okay? And all my little sisters look  
 19 like her. See? So when I say that, I had a  
 20 chance to live across --  
 21 Q. Right.  
 22 A. -- to understand that. And then, of  
 23 course, my first taste of politics, I ran campus

<p style="text-align: right;">Page 165</p> <p>1 wide for student senate.</p> <p>2 Q. Uh-huh.</p> <p>3 A. Which it was 40 -- it probably was more</p> <p>4 than that. I'd say it was 40 black students out</p> <p>5 of the whole student population. And I ran campus</p> <p>6 wide against two candidates that looked like you,</p> <p>7 and I won. So it helps.</p> <p>8 Q. Yeah.</p> <p>9 A. So it's -- when you hear me talk about</p> <p>10 the interactions and when you hear me talk about</p> <p>11 opportunity districts, I know they're in the right</p> <p>12 places that if an opportunity district is there,</p> <p>13 that people can. Because you're looking at</p> <p>14 somebody, 40 to 2,500 --</p> <p>15 Q. Uh-huh.</p> <p>16 A. -- and I won?</p> <p>17 Q. Yeah.</p> <p>18 A. So if opportunity -- I got the</p> <p>19 opportunity, and I won. That's why I said it's</p> <p>20 important to have those opportunity districts.</p> <p>21 Q. Have things improved in Alabama racially</p> <p>22 with regard to education?</p> <p>23 MR. BLACKSHER: Objection to form.</p>	<p style="text-align: right;">Page 167</p> <p>1 the opportunity to get those kind of things was a</p> <p>2 lot better. But still, you had the problems. You</p> <p>3 had the resistance. You had the resistance when</p> <p>4 we walked into PE to change clothes. You'd be</p> <p>5 surprised the kind of resistance that we faced,</p> <p>6 you know.</p> <p>7 Q. Uh-huh.</p> <p>8 A. But as times began to change and, of</p> <p>9 course, people began to get a better acceptance of</p> <p>10 each other. And I think we've come a long ways in</p> <p>11 that regard. But in terms of political</p> <p>12 opportunities, we have not advanced to nowhere</p> <p>13 where we need to be, you know --</p> <p>14 Q. When you say political opportunities,</p> <p>15 what do you mean?</p> <p>16 A. Well, we're in a state with what? How</p> <p>17 many -- 26, 27, 28 percent African American?</p> <p>18 Q. 26. 26. 26 plus change.</p> <p>19 A. Change. Plus change. You know. And yet</p> <p>20 we only have one person -- opportunity to pick one</p> <p>21 person, point-blank. And that's -- that's not</p> <p>22 good. You know. That's not good.</p> <p>23 Q. What about have things improved in the</p>
<p style="text-align: right;">Page 166</p> <p>1 Q. (BY MR. WALKER:) Since you were a child?</p> <p>2 A. How far back you want to go? Before</p> <p>3 integration or afterwards?</p> <p>4 Q. Your perception from when you were a</p> <p>5 child to now.</p> <p>6 A. Well, you know, I was, in elementary and</p> <p>7 middle school and high school up through tenth</p> <p>8 grade, I was in the world that was supposed to be</p> <p>9 separate but equal.</p> <p>10 Q. Yeah.</p> <p>11 A. You know. And it wasn't nothing equal</p> <p>12 about getting these tore-up books that --</p> <p>13 Q. Right.</p> <p>14 A. -- somebody's had -- you know how they</p> <p>15 just write in there who had it this year and that</p> <p>16 year, and it's about the third time and the back</p> <p>17 about to come off?</p> <p>18 Q. Uh-huh.</p> <p>19 A. You know, versus people who getting</p> <p>20 brand-new books and we getting the ones that they</p> <p>21 don't want. So that's -- that's what was</p> <p>22 happening some during that period.</p> <p>23 But after we integrated then, of course,</p>	<p style="text-align: right;">Page 168</p> <p>1 state over the course of your lifetime in terms of</p> <p>2 jobs? Discrimination and jobs?</p> <p>3 A. Well, there was a period that it did.</p> <p>4 There was a period.</p> <p>5 Q. That it did improve?</p> <p>6 A. Yes, it did improve. But we've began to</p> <p>7 slide backwards now. Beginning to slide</p> <p>8 backwards.</p> <p>9 Q. Explain to me what you mean about that,</p> <p>10 please.</p> <p>11 A. Well, you know, you -- you know, there's</p> <p>12 trying to be a de-emphasis on diversity and</p> <p>13 equity --</p> <p>14 Q. Uh-huh.</p> <p>15 A. -- like they --</p> <p>16 Q. Oh, you're talking about what's going on</p> <p>17 now?</p> <p>18 A. Yeah. We -- we're going backwards now.</p> <p>19 I have a -- I know you didn't ask me this and</p> <p>20 that's probably -- wish you hadn't, but I'm going</p> <p>21 to share it with you.</p> <p>22 If you walk in my office right now,</p> <p>23 you'll see a picture. If you ever come, I'm going</p>

<p style="text-align: right;">Page 169</p> <p>1 to show you the picture. It's a picture on the          2 wall.          3 Q. Uh-huh.          4 A. And it was the last elected legislators,          5 Congress and the legislature in Alabama before          6 Reconstruction.          7 Q. Oh, yeah.          8 A. It's up there for a reason.          9 Q. Right. And I know what the reason was.          10 A. You probably heard me say that on the          11 floor. And it's a simple reason and it concerns          12 me because I can see a visual movement that these          13 bills and things we're passing is an effort,          14 directly or indirectly or by a certain group or          15 whatever, but it's an effort to turn us back and          16 take us back to -- and take away the things that          17 we have had the opportunity -- through          18 collaborative effort by everybody -- to move          19 forward.          20 To give a -- last example on that is          21 that the realtors, they're in court now          22 challenging the -- their commission where it says          23 that they're going to put two African Americans or</p>	<p style="text-align: right;">Page 171</p> <p>1 health care over the course of your life for black          2 people in Alabama?          3 A. Yes, because, of course, you know, when          4 I -- when you say my life, remember I'm -- I'm Jim          5 Crow era.          6 Q. Yeah.          7 A. I can tell you when I used to have to go          8 to the doctor's office and we had one little room          9 half as big as this here and all the black people          10 packed up in that room and then you had a big,          11 beautiful place like this right here where the,          12 you know --          13 Q. Right.          14 A. -- majority population just walk in and          15 get waited.          16 Now, I know you didn't ask me this, but          17 I'm going to tell you. I -- I got waited on          18 because I went in the big room. They didn't want          19 me in there, so they said, "Come on. Let's take          20 you on to the doctor, get him out of here now."          21 So, yes, I'm not going to stand back and not get          22 waited on.          23 Q. Do you have any information we haven't</p>
<p style="text-align: right;">Page 170</p> <p>1 there. They're trying to get the court to          2 overturn that so they don't have to put none on          3 there. That's what I mean when I say that;          4 that --          5 Q. Okay.          6 A. Yeah. Even though the legislature itself          7 has -- we have some general language that's pretty          8 acceptable that we should have diversity that we          9 think will meet the muster -- over the years we've          10 used the same language that --          11 Q. Every time y'all create a commission,          12 yeah.          13 A. Yeah. Yeah, so instead of putting          14 "quota," but that's what I mean. That's a          15 concerted effort to turn the clocks back. And          16 that's why we've got -- if we're depending on          17 where we are now -- I don't mean these districts.          18 But them old ones --          19 Q. Uh-huh.          20 A. -- we're not going to ever get          21 representation other than just that one that's          22 packed.          23 Q. Have things improved in the area of</p>	<p style="text-align: right;">Page 172</p> <p>1 already discussed today about the history of          2 official voting-related discrimination in the          3 State of Alabama?          4 A. No.          5 MR. BLACKSHER: Object to form.          6 MR. WALKER: You said object to form?          7 A. I don't have any information.          8 MR. BLACKSHER: I didn't understand the          9 question; I'm sorry.          10 MR. WALKER: Okay. It's just a wrap-up          11 question.          12 Q. Did -- I asked the senator if he had any          13 information about the history of official          14 voting-related discrimination in the State of          15 Alabama that we haven't discussed?          16 A. Not to my knowledge. I'm -- no. I'm          17 aware there are some other issues out there, but I          18 can't recall specifically what those issues would          19 be or when they happened or anything like that.          20 Q. Do you have any information that we          21 haven't discussed today that concerns voting          22 practices in Alabama or that Alabama has used that          23 you believe make it easier to discriminate against</p>



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1 black voters?

2 A. Well, I think we -- since I've been in  
3 the legislature -- I mean, I'm going back to when  
4 I first got there. It was in '95, '96, in there,  
5 that we've been -- the body has been passing law  
6 that, in my opinion, has been trying to discourage  
7 people from voting or making it more difficult for  
8 them to vote; from the voter IDs to to now, you  
9 can't help anybody whatsoever, to filling out --  
10 it's just that where -- you know. I think that  
11 the legislature has passed bills that have began  
12 to -- have made it very difficult or more  
13 difficult for people to register as well as to  
14 vote. Especially minorities. I do. And I say  
15 that because that's just my opinion.

16 Q. Sure.

17 A. I feel that they are -- let me use the  
18 words -- and I can wrap you up with me. Let me  
19 use the words that I sincerely, you know, believe

20 Q. Uh-huh.

21 A. And I've said it numerous times on the  
22 Senate floor. I don't get the benefit of the  
23 doubt. Point-blank. You do. Not you personally

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1 Q. Yeah.

2 A. But you walk in with the assumption of  
3 the benefit of the doubt --

4 Q. You mean because I'm white?

5 A. Yeah.

6 Q. Okay.

7 A. I don't get the benefit of the doubt.

8 Q. Because you're black?

9 A. Yeah.

10 Q. Okay.

11 A. And I've been in situations where I've  
12 gone in dressed in my ball stuff and folks don't  
13 know I'm the senator.

14 Q. Yeah.

15 A. And I've gone in big stores and having  
16 worked in retail. And I had my son with me, and  
17 said, "I'm going to show you." I showed him.  
18 He's a grown man now. Fully grown. But I said,  
19 "I'm going to show you what it is being a black  
20 man in this world."

21 Q. Uh-huh.

22 A. We walked in. I got a jogging suit on,  
23 my hat. I think I got these, the Ray-Bans, on.

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1 Q. Yeah.

2 A. I walk in there. Time I walked through  
3 the door -- and when you hear this, you're going  
4 to know. It may not be about you, but that's what  
5 they're doing. When you walk in a store, you  
6 hear, a "ding, ding, ding, ding, ding" -- you ever  
7 heard that little "ding, ding, ding, ding, ding"?  
8 That's security. They on you.

9 Q. Uh-huh.

10 A. And I told him, I said, "Now, that means  
11 they on us. Two black men. We're going to go  
12 over into this little area." Like we went to get  
13 something.

14 Q. Yeah.

15 A. And I said -- and I told him, I said,  
16 "Look over my left shoulder. Two rows down. What  
17 you see?" He said, "Security." I said, "They  
18 watching us."

19 Okay. And you say what's the  
20 significance of that? I paid for what we got and  
21 walked out of there. Went to church, put on a  
22 suit, walked through -- went back. I said, "Now,  
23 come on. I'm going to show you the difference."

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1 Walked in there. No "ding, ding."

2 People looked up there, said, "Hey, Senator, how  
3 you doing?" Now ain't no "ding, ding," nobody  
4 watching me or nothing. That's what I meant.

5 Q. Okay.

6 A. If I ain't the senator -- if they don't  
7 know I'm the senator, this same senator, I ain't  
8 nothing but just a black man and I'm going to get  
9 treated the way that it is.

10 Remember, I been profiled over five  
11 times. Montgomery Police profiled me going to the  
12 State House. Yeah. Right downtown on the main  
13 street with the sticker on the back of my car.  
14 Okay?

15 So I just -- and, you know, till he  
16 realized who I was.

17 Q. Yeah.

18 A. You know, so. And he ain't the only one.  
19 I've done had Birmingham Police do the same thing  
20 And it ain't about black and white. It's the  
21 profile. You're going to get profiled if you  
22 black. You know. And so that's the same benefit  
23 of the doubt you don't get.

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1 And that's why we've got to have these  
2 opportunity districts because, you know, you ain't  
3 going to get -- if you don't have a -- if you're  
4 not in a situation like that, you ain't fixing to  
5 get the benefit of the doubt. Uh-uh.  
6 Q. Okay. Thank you.  
7 Is there anything sitting here today  
8 that you expect to testify about at trial that we  
9 haven't discussed?  
10 A. No.  
11 MR. WALKER: Senator Smitherman, that's  
12 my last question. Now, Mr. Blacksher --  
13 MR. BLACKSHER: Could we have a  
14 five-minute recess?  
15 MR. WALKER: Let's take a five-minute  
16 break, yeah.  
17 (Recess.)  
18 MR. BLACKSHER: I just really have one  
19 question, Senator Smitherman.  
20 MS. MESSICK: Jim?  
21 MR. BLACKSHER: Yes?  
22 MS. MESSICK: Jim, I'm sorry.  
23 MR. BLACKSHER: Oh, you had some

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1 questions? I'm sorry.  
2 MS. MESSICK: Yeah, I just want to say I  
3 do have some questions before you get started.  
4 I'm happy to go before or after you, whatever your  
5 preference is.  
6 MR. BLACKSHER: No, you go ahead. That  
7 would be fine. Thank you. I'm sorry.  
8 THE WITNESS: And she's the attorney for?  
9 MR. WALKER: Secretary of State Allen.  
10 MR. BLACKSHER: She's the attorney for  
11 Secretary of State Allen.  
12 THE WITNESS: Oh, okay. Okay.  
13 EXAMINATION  
14 BY MS. MESSICK:  
15 Q. Good afternoon, Senator.  
16 A. Good afternoon.  
17 Q. My name is Misty Messick. And as I just  
18 told you, I am the lawyer for Secretary of State  
19 Wes Allen, who's actually additionally sued in  
20 this matter.  
21 A. Okay.  
22 Q. And I just have a few questions for you.  
23 I wanted to start, late in your

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1 testimony, you mentioned that you have been  
2 racially profiled five times. I was really sorry  
3 to hear that, and I wanted to understand more  
4 about that.  
5 When is the last time -- the most recent  
6 time that that happened?  
7 A. I don't know the exact date. I don't  
8 know the exact date. I don't recall it. I  
9 didn't, you know, categorize it, catalog it or  
10 anything, but I don't know exactly. It's been  
11 several years ago.  
12 Q. Was it more than ten years ago?  
13 A. I just don't know. I -- you know,  
14 remember I'm under oath. So I don't know for  
15 certain.  
16 Q. Okay. And I believe you said you were  
17 pulled over once by the Montgomery Police and once  
18 by the Birmingham Police?  
19 A. I've been pulled over twice by  
20 Birmingham.  
21 Q. Do you remember when you -- either one of  
22 those were?  
23 A. No. I don't. But one of them, my wife

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1 was in the car with me. Who happens to be a  
2 judge.  
3 Q. She's a state court judge up in Jefferson  
4 County?  
5 A. Yes. Yes.  
6 Q. Have you ever been pulled over by a state  
7 trooper in Alabama?  
8 A. Not profiled, no.  
9 Q. Do you remember where the other instances  
10 where you believe you were profiled happened? You  
11 said there were a total of five and two were in  
12 Birmingham and one in Montgomery?  
13 A. And one was in Homewood. And another was  
14 on the interstate in another state. Then I left  
15 one out, which this is probably about 30 or 40  
16 years ago. I -- same thing happened to me in  
17 Slidell, Louisiana, as well.  
18 Q. When the legislature was working on  
19 drawing a new map in 2023 after it was decided  
20 that the 2021 Map could not be used for these  
21 current elections, do you remember any talk of  
22 Kevin McCarthy being on the phone with members of  
23 the legislature?

<p style="text-align: right;">Page 181</p> <p>1 A. I don't recall.</p> <p>2 Q. Do you know who Kevin McCarthy was at the</p> <p>3 time that that map was being drawn?</p> <p>4 A. I've heard of the name, but I just don't</p> <p>5 recall specifically. Remember I'm under oath. So</p> <p>6 I don't -- if I can't recall specifically, you</p> <p>7 know, I'm not going to...</p> <p>8 Q. Okay. He was the Speaker of the United</p> <p>9 States House of Representatives.</p> <p>10 A. Oh, yeah. Oh, yeah. Now I know who</p> <p>11 you're talking about, yeah.</p> <p>12 Q. Do you remember hearing that he was on</p> <p>13 the phone with people in the Alabama legislature</p> <p>14 while that map was being drawn in 2023?</p> <p>15 A. Well, I didn't hear necessarily he was on</p> <p>16 the phone. But since you're saying what I heard,</p> <p>17 I can't substantiate who I heard it from exactly</p> <p>18 if you ask me the name right now, but I did -- but</p> <p>19 it was mentioned --</p> <p>20 MR. BLACKSHER: I'm going to instruct the</p> <p>21 witness not to answer that question if it calls</p> <p>22 for hearsay.</p> <p>23 A. Well, it's hearsay. I don't have any</p>	<p style="text-align: right;">Page 183</p> <p>1 A. Not for certain I don't know, no.</p> <p>2 Q. I believe earlier you suggested that you</p> <p>3 were concerned that the Mobile area might be</p> <p>4 gerrymandered in the court-ordered map which I</p> <p>5 believe is Exhibit 3 that you have in front of</p> <p>6 you.</p> <p>7 A. Exhibit 3? Exhibit 3? This one?</p> <p>8 MR. WALKER: That one.</p> <p>9 THE WITNESS: This one right here?</p> <p>10 MR. WALKER: Yes, sir.</p> <p>11 Q. (BY MS. MESSICK:) Yeah. Did you say</p> <p>12 that you had concerns that Mobile was</p> <p>13 gerrymandered in that map?</p> <p>14 A. What I think I said was, was that this</p> <p>15 drawing here goes in to get part of that and some</p> <p>16 of the appearances of gerrymandering, where all</p> <p>17 the areas where there are parts of the county are</p> <p>18 taken out. I said that across the blanket. I</p> <p>19 said Jefferson County. I talked about Lauderdale.</p> <p>20 I talked about Elmore -- I think it's Elmore --</p> <p>21 and Tuscaloosa. So, you know, my reference was</p> <p>22 any county where that you had gone in that wasn't</p> <p>23 whole because I think we were discussing the whole</p>
<p style="text-align: right;">Page 182</p> <p>1 proof. It is hearsay.</p> <p>2 Q. (BY MS. MESSICK:) All right. But we</p> <p>3 don't make hearsay objections in a deposition</p> <p>4 normally.</p> <p>5 Do you remember hearing about any other</p> <p>6 members of the United States Congress in</p> <p>7 communications with any members of the Alabama</p> <p>8 legislature when that map was being drawn? So it</p> <p>9 could be Democrat or Republican side.</p> <p>10 A. Well, it's, there again, that I -- I</p> <p>11 don't know for a fact. I didn't have any direct</p> <p>12 conversation with the person who may have called</p> <p>13 or I wasn't standing there when there was a phone</p> <p>14 conversation with somebody like that, so I don't</p> <p>15 know, you know, from that perspective whether that</p> <p>16 certainly actually happened or not. I don't know.</p> <p>17 Q. Are you aware of whether the national</p> <p>18 Democrats are involved in the CD-2 race?</p> <p>19 A. No, I don't know because I'm not on the</p> <p>20 executive committee or anything like that, so I</p> <p>21 don't know for certain. Not for certain I don't.</p> <p>22 Q. Do you know whether the national</p> <p>23 Republicans are involved in the CD-2 race?</p>	<p style="text-align: right;">Page 184</p> <p>1 county plan. And that's what the reference was</p> <p>2 into, the fact that these counties had been split</p> <p>3 and not kept whole.</p> <p>4 Q. And what voters are you saying that that</p> <p>5 map went in to get in Mobile?</p> <p>6 A. Well, I mean, I don't have it here in</p> <p>7 front of me to say with certainty who they got.</p> <p>8 But I will say I can only go back to Jefferson</p> <p>9 County. I know for certain they went in to get</p> <p>10 black voters to satisfy District 7. Because I</p> <p>11 live in Jefferson County and I live in that part</p> <p>12 of the county and I represent.</p> <p>13 Q. Mr. Walker asked you about racial appeals</p> <p>14 in campaigns. And I believe you told him that you</p> <p>15 believe that code words were being -- were still</p> <p>16 used but you couldn't really remember the last</p> <p>17 time you had seen a racial appeal in a campaign.</p> <p>18 And then sometime later, you were talking about</p> <p>19 racial appeals again like it was something that's</p> <p>20 more common. And so I wondered if, during the</p> <p>21 course of your deposition while you've been</p> <p>22 sitting here today, you thought of any examples of</p> <p>23 when you've seen racial appeals used in elections</p>

<p style="text-align: right;">Page 185</p> <p>1 in Alabama?</p> <p>2 A. And I can't name specific dates and</p> <p>3 times. At this time I can't, you know. But I --</p> <p>4 you know, I know that I've seen them. Remember</p> <p>5 remember --</p> <p>6 Q. Okay. And I --</p> <p>7 A. Remember, I'm the product of segregation</p> <p>8 and integration. I know what I see. It's just</p> <p>9 that I don't have any reason to record it and pin</p> <p>10 it and say this is the date and time this has</p> <p>11 happened and keep this as I walk through my life.</p> <p>12 No, I don't do that. I try to forget them,</p> <p>13 really, because, you know, it's not -- those are</p> <p>14 not nice things and I just try not to embrace</p> <p>15 them.</p> <p>16 Q. I understand that. I'm not asking you</p> <p>17 for a specific date or time. I'm asking a</p> <p>18 specific election, a time frame. It's something</p> <p>19 much broader than that.</p> <p>20 A. I understand. I'm not -- I can't recall</p> <p>21 tracking it in somebody's election to that extent,</p> <p>22 you know. So I -- other than my own, you know.</p> <p>23 So from that perspective.</p>	<p style="text-align: right;">Page 187</p> <p>1 white voters in Jefferson County would be</p> <p>2 different from the white voters in the rest of the</p> <p>3 state?</p> <p>4 MR. BLACKSHER: Okay, I'm going to object</p> <p>5 to the form of that question as being both complex</p> <p>6 and with a series of faulty predicates. But you</p> <p>7 may answer if you can, Senator.</p> <p>8 A. Well, first, I think let's start out with</p> <p>9 the fact that -- and I'm not saying you say I</p> <p>10 said, but the inference is that -- I didn't say we</p> <p>11 had a large number of white Democrats. I actually</p> <p>12 said, if you look back on that, that we have a</p> <p>13 large number of independent voters. I didn't call</p> <p>14 them white Democrats. I called them independent</p> <p>15 voters, who -- for instance, I -- I can just</p> <p>16 remember one -- several, several years ago, but</p> <p>17 one election that I had, I'm over in Homewood, and</p> <p>18 on one side of the people's yard, they clearly had</p> <p>19 a -- I won't, you know, call their name out, but a</p> <p>20 person that was running, I think for U.S. Senate,</p> <p>21 who was a Republican on this side of their yard,</p> <p>22 and they had a Smitherman sign on the other side</p> <p>23 of their yard.</p>
<p style="text-align: right;">Page 186</p> <p>1 Q. Do you think that Kamala Harris will get</p> <p>2 a different reception in Alabama than Joe Biden</p> <p>3 would have for the 2024 presidential race?</p> <p>4 A. Yeah, I think -- I don't know about than</p> <p>5 Joe Biden would get. I couldn't make that</p> <p>6 comparison between him and Biden. But I think</p> <p>7 that she will get a positive -- you know,</p> <p>8 whether -- I don't know she's going to get a</p> <p>9 majority, but I think she'll do pretty well in</p> <p>10 Alabama considering.</p> <p>11 Q. If I understood you right, I believe you</p> <p>12 said that you think that race is part of the</p> <p>13 reason why some white voters in Alabama prefer</p> <p>14 Republican candidates. And I wondered what makes</p> <p>15 you say that?</p> <p>16 At sometimes I've heard other people</p> <p>17 blame it on history of discrimination in the</p> <p>18 state. But as you've sat here today, you've</p> <p>19 talked a lot about how an opportunity district is</p> <p>20 sufficient in Jefferson County because there are a</p> <p>21 lot of white Democrats there. And, of course,</p> <p>22 Birmingham has a tremendous amount of civil rights</p> <p>23 history. And so I'm wondering why the vote -- the</p>	<p style="text-align: right;">Page 188</p> <p>1 That's what I mean. We have those kind</p> <p>2 of voters here. They are independent enough to</p> <p>3 look at each race and each candidate in those</p> <p>4 races and make those decisions and give them</p> <p>5 consideration without race being a controlling</p> <p>6 factor.</p> <p>7 That's why you have to look at those</p> <p>8 functionality studies to see what communities</p> <p>9 would provide that. And that's what those studies</p> <p>10 would show you. They show you clearly through</p> <p>11 that series of races for ten years whether or not</p> <p>12 they crossed over and this race they voted for an</p> <p>13 African American and this race they voted for a</p> <p>14 Republican and this race they voted -- those are</p> <p>15 the people that you've got to have in the</p> <p>16 districts -- in those districts to be able to have</p> <p>17 a fair chance for everybody to be elected. And</p> <p>18 the district that is drawn now that provides that,</p> <p>19 District 2, but the district up here that I'm</p> <p>20 talking about even provides it better.</p> <p>21 Q. Do you have a sense of whether there are</p> <p>22 more white independent voters in Jefferson County</p> <p>23 than in other parts of the state?</p>



<p style="text-align: right;">Page 189</p> <p>1 A. Yeah. I think it is. No doubt in my          2 mind I do.          3 Q. Do you know why that would be?          4 A. I can't tell you why, you know, but          5 except that, you know, they -- they have more of          6 an open mind, I think. They look at the          7 candidates -- they look at each race -- I think          8 people up here look at each race more individually          9 and who's running, you know, than just lumping          10 everybody in one group.          11 Q. Are you aware of any changes the Alabama          12 legislature has recently made with respect to          13 grocery taxes?          14 A. I think the state -- if I'm correct, and          15 I stand to be corrected, I think the state reduced          16 this amount, you know, trying to get to 4 percent          17 but I think 2 percent and then I think looking at          18 what the economic indicators may, you know, show          19 us or whether or not we can do it -- you know,          20 reduce it 2 more cents. I think that's where we          21 are at in that process right now.          22 Q. Do you know who pushed in past years for          23 changes or reduction in the grocery tax?</p>	<p style="text-align: right;">Page 191</p> <p>1 Well, we had to fix the freeway up here because          2 you know, a big hole was in the freeway. It was          3 breaking apart. So we had to get it done. But          4 they got it -- they fixed it right in the          5 beginning of that. So, yes, we got the freeway          6 fixed up here and that -- that was in part -- it          7 wasn't right after we passed the tax. It was          8 during the period that we was trying to pass the          9 tax. And -- so --          10 Q. Are you talking about I-65 or something          11 else?          12 A. Yeah. Right downtown. I-65 where it          13 meets up with I-20/59, you know.          14 Q. Malfunction Junction?          15 A. It used to be -- Malfunction Junction,          16 yes.          17 Q. Okay. Have there been any other projects          18 in Jefferson County as a result of that gas tax          19 passing?          20 A. Oh, it has. I can't recall them, but it          21 has.          22 Q. Did Alabama just pass a new Constitution          23 a couple years ago?</p>
<p style="text-align: right;">Page 190</p> <p>1 A. Representative John Knight.          2 Q. Anybody else?          3 A. And come after him, but it was John          4 Knight.          5 Q. And it's historically been an issue that          6 Democrats have supported; right?          7 A. That's correct.          8 Q. Do you remember any recent large changes          9 with respect to gas taxes?          10 A. Yes. Yes, we voted on whether or not we          11 were going to increase the gas tax.          12 Q. And what was the result?          13 A. It passed.          14 Q. And so did that increase or decrease the          15 taxes?          16 A. It increased them.          17 Q. Do you know what the new revenue was for?          18 A. Highway projects and bridges.          19 Q. Are any of those -- have any projects          20 funded by that increased gas tax been announced          21 for your district?          22 A. I want to tell you that one was          23 preannounced as we're trying to pass the tax.</p>	<p style="text-align: right;">Page 192</p> <p>1 A. Yes, we passed --          2 MR. BLACKSHER: Object to form.          3 Q. (BY MS. MESSICK:) What, as you sit here          4 today, can you tell me about the changes made in          5 that Constitution?          6 A. Not all of it. I just remember we dealt          7 with the racial language. That was one of the          8 things. I think we dealt with some of the racial          9 language that was in there.          10 Q. And in dealing with it, that language was          11 removed?          12 A. Well, finally. You know, that language          13 has been on the ballot a couple times and it was          14 not removed. To my knowledge. You know, that's          15 the way I see it, I remember it.          16 Q. Some of the language that was removed was          17 already essentially voided under federal law,          18 wasn't it?          19 A. Yes.          20 Q. What racial language do you remember          21 being considered for removal before and kept?          22 A. I don't remember that language.          23 Q. Do you remember a fight over removing</p>

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1 racial language that involved education and  
 2 concerns about what the impact of the proposed  
 3 change would mean?  
 4 A. Uh-uh. I don't.  
 5 Q. I want to return to my questions earlier  
 6 about the involvement of national political  
 7 figures in the Alabama legislature's 2023  
 8 redrawing of the maps. I know that you say that  
 9 you were not directly part of any conversations,  
 10 but did you hear about conversations that were  
 11 going on with national political figures and  
 12 members of the Alabama legislature?  
 13 MR. BLACKSHER: Object to form of the  
 14 question.  
 15 A. Well, I -- I would think that that would  
 16 be hearsay. So I -- I -- I don't have any answer  
 17 other than the fact that I had no direct knowledge  
 18 whatsoever. None. Wasn't even in the presence of  
 19 somebody else, you know, talking to somebody out  
 20 of Washington about that to my knowledge.  
 21 Q. (BY MS. MESSICK:) Yes, sir. I'm asking  
 22 you to tell me what you heard.  
 23 A. And I --

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1 MR. BLACKSHER: I object to the form of  
 2 the question.  
 3 A. I'd still say it's hearsay. That would  
 4 be my answer. Because I can't substantiate  
 5 anything. So I -- that would be my answer.  
 6 MS. MESSICK: Thank you for your time  
 7 this afternoon. I don't have any further  
 8 questions.  
 9 THE WITNESS: Thank you.  
 10 EXAMINATION  
 11 BY MR. BLACKSHER:  
 12 Q. Okay. Senator Smitherman, just a couple  
 13 questions.  
 14 Ms. Messick just referred to the new  
 15 Alabama Constitution. That's, in fact, a  
 16 codification of the existing 1901 Constitution,  
 17 isn't it?  
 18 A. That's correct.  
 19 Q. It's not a new Constitution. It's just a  
 20 recodification that takes out provisions that were  
 21 struck down, as Ms. Messick said, by the federal  
 22 government?  
 23 MS. MESSICK: Object to the form.

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1 A. Yes. You're right. And -- you are  
 2 right. And it's my -- my understanding that it  
 3 was just one or so articles. It was not the  
 4 Constitution itself. It was an article one or two  
 5 or whatever that number of articles that was  
 6 addressed at that time. But to the Constitution  
 7 as a whole, issues dealing with gambling, taxes  
 8 and taxation, home rule, and all that, none of  
 9 that was addressed whatsoever.  
 10 Q. But the racial language that was taken  
 11 out in this recodification was, as she said -- as  
 12 Ms. Messick said, a result of rulings by the  
 13 federal government, by the federal courts that  
 14 makes them unenforceable; is that correct?  
 15 MS. MESSICK: Object to the form.  
 16 A. That's correct. In fact, that brings  
 17 back to my mind when you said about the federal  
 18 government, we talked earlier about gains and  
 19 losses. And the gains that we got came straight  
 20 from the federal government. State of Alabama  
 21 didn't -- hasn't passed any laws that gain for  
 22 minorities in this process we're saying now.  
 23 Q. (BY MR. BLACKSHER:) You're talking about

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1 the changes that --  
 2 A. Right.  
 3 Q. -- that Mr. Walker said -- asked you  
 4 about that have occurred over your lifetime?  
 5 A. Uh-huh. I would say the positive change  
 6 came from the federal government, not from the  
 7 state. And I'll just say that simply because of  
 8 being a constitutional law professor, I know the  
 9 changes that came because I was teaching it in law  
 10 school, those changes. And they didn't come from  
 11 the state. And I was in the legislature at the  
 12 same time. They didn't come from us. The changes  
 13 and things that I saw that had happened and the  
 14 ones as we moved forward came from the federal  
 15 government.  
 16 Q. Did the --  
 17 A. And a reflection -- I just want to say  
 18 and a reflection of how we've gone backwards as a  
 19 race is that Justice Oscar Adams and Justice Cook  
 20 won statewide offices. We haven't had anybody,  
 21 especially African American, win a statewide  
 22 office since then. So we've gone backwards  
 23 really.

<p style="text-align: right;">Page 197</p> <p>1 Q. Was the opportunity you took advantage of          2 to get elected to the Alabama Senate, was that          3 opportunity provided by the federal government or          4 the state government? Did the state government or          5 the federal government provide the opportunity for          6 African Americans --          7 A. Oh.          8 Q. -- in Alabama to elect members of the          9 Alabama legislature?          10 A. I got you. No, that was federal          11 government. You know. That's where we got the          12 first opportunity after Reconstruction. It was          13 based on the federal government.          14 Q. And is the same true with respect to the          15 opportunity to elect members of Congress?          16 A. Yes.          17 Q. With respect to the split of Mobile          18 County in Remedial Plan 3 that Ms. Messick was          19 asking you about --          20 A. Yes.          21 Q. And didn't you testify that you support          22 this plan that was adopted by the court?          23 A. Yes. I support it. I support it now.</p>	<p style="text-align: right;">Page 199</p> <p>1 MR. DORMAN: Thank you.          2 MR. BLACKSHER: Okay. Off the record.          3 (The deposition was concluded at          4 12:51 p.m.)          5          6          7          8          9          10          11          12          13          14          15          16          17          18          19          20          21          22          23</p>
<p style="text-align: right;">Page 198</p> <p>1 Q. And are you aware that your lawyers in          2 court have taken the position that this plan does          3 not violate either the Voting Rights Act or the          4 Constitution?          5 A. Yes.          6 Q. Okay. Do you disagree with that?          7 A. No. Not -- not -- no. Uh-uh. Because          8 not only that, but the paramount is that we need          9 an opportunity district so African Americans at          10 least have a shot at getting the person of their          11 choice.          12 MR. BLACKSHER: Okay. Back to you,          13 Dorman.          14 Well, wait a minute. I'm sorry.          15 Ms. Sadasivan may have some questions.          16 MS. SADASIVAN: Kathryn Sadasivan. Thank          17 you so much for sitting for a deposition. I don't          18 have any further questions for the Milligan          19 plaintiffs. Thank you.          20 MR. WALKER: Nothing further for me.          21 Thank you so much for coming in today, Senator          22 Smitherman.          23 THE WITNESS: Good to see you.</p>	<p style="text-align: right;">Page 200</p> <p>1 CERTIFICATE          2          3 STATE OF ALABAMA          4 AT LARGE          5          6 I hereby certify that the above and          7 foregoing deposition of SENATOR RODGER SMITHERMAN          8 was taken down by me in stenotype and the          9 questions and answers thereto were transcribed by          10 means of computer-aided transcription, and that          11 the foregoing represents a true and correct          12 transcript of the testimony given by said witness          13 upon said hearing.          14          15 I further certify that I am neither of          16 counsel, nor of kin to the parties to the action,          17 nor am I in anywise interested in the result of          18 said cause.          19 I further certify that I am duly licensed          20 by the Alabama Board of Court Reporting as a          21 Certified Court Reporter as evidenced by the ACCR          22 number following my name found below.          23          So certified on this date, August 22, 2024.            /s/Sabrina Lewis, CCR, RDR, CRR          CCR #165, Expires 9/30/24          Commissioner for the State of          Alabama at Large          My commission expires 5/8/27</p>

<hr/> <p><b>Exhibits</b></p> <hr/> <p><b>Smitherman DX-1</b> 77:13</p> <p><b>Smitherman DX-2</b> 101:6,10 112:1</p> <p><b>Smitherman DX-3</b> 98:23 125:18,22 183:5,7</p> <hr/> <p><b>#</b></p> <hr/> <p><b>#165</b> 200:21</p> <hr/> <p><b>\$</b></p> <hr/> <p><b>\$1</b> 140:19</p> <p><b>\$100</b> 140:11</p> <p><b>\$160</b> 140:12</p> <p><b>\$206</b> 140:20</p> <hr/> <p><b>(</b></p> <hr/> <p><b>(36101)</b> 6:17</p> <hr/> <p><b>1</b></p> <hr/> <p><b>1</b> 8:11 77:13 113:3</p> <p><b>10</b> 8:6 59:10,11 117:19 140:6,7,8,11,12</p> <p><b>10-</b> 51:17</p> <p><b>100</b> 32:12 152:10,15</p> <p><b>1000</b> 2:4 3:8 5:13 9:7</p> <p><b>10006</b> 6:8</p> <p><b>101</b> 8:12</p> <p><b>10:27</b> 90:13</p> <p><b>12-year</b> 51:17</p> <p><b>125</b> 8:14</p> <p><b>12:51</b> 199:4</p> <p><b>15</b> 117:19 141:1</p> <p><b>1500</b> 7:7</p> <p><b>1536</b> 101:11,22</p> <p><b>16th</b> 16:22</p>	<p><b>17</b> 134:7</p> <p><b>178</b> 8:6</p> <p><b>18</b> 24:3,5 87:9 105:16</p> <p><b>1901</b> 7:7 194:16</p> <p><b>194</b> 8:7</p> <p><b>1970s</b> 164:10</p> <p><b>1976</b> 23:12</p> <p><b>1985</b> 72:6</p> <p><b>1990</b> 44:7</p> <hr/> <p><b>2</b></p> <hr/> <p><b>2</b> 31:9 32:2 98:23 101:6, 10 104:15 112:1 113:3 163:6 188:19 189:17,20</p> <p><b>2,500</b> 165:14</p> <p><b>20</b> 17:3 50:6 117:19</p> <p><b>2001</b> 5:13</p> <p><b>2010</b> 68:18 106:21</p> <p><b>2020</b> 35:1 36:18 49:14 63:21 68:18 69:5,15 74:18</p> <p><b>2021</b> 20:14,20 74:19 77:18,20 78:1 82:2 84:6 91:4 102:22 180:20</p> <p><b>2022</b> 154:14 155:23</p> <p><b>2023</b> 8:13 10:22 20:17,22 97:22 99:3,16 101:12,14 102:16 111:23 119:16,23 120:5 123:20 180:19 181:14 193:7</p> <p><b>2024</b> 1:22 2:3 3:10 9:8 186:3 200:16</p> <p><b>205-226-8767</b> 7:9</p> <p><b>205-612-3752</b> 5:8</p> <p><b>205-837-2898</b> 5:15</p> <p><b>206</b> 140:15 141:15 152:12 162:11</p> <p><b>21</b> 61:10 105:16</p> <p><b>22</b> 155:22 156:14 200:16</p> <p><b>224</b> 16:22</p> <p><b>23</b> 74:23</p> <p><b>24</b> 74:23</p>	<p><b>242-4</b> 8:11 77:18</p> <p><b>242-5</b> 8:12 101:11</p> <p><b>25</b> 111:7</p> <p><b>26</b> 167:17,18</p> <p><b>27</b> 87:4,10,20,21 105:14, 15 167:17</p> <p><b>28</b> 167:17</p> <p><b>29</b> 1:22 2:3 3:9 9:8</p> <p><b>2:21-CV-01530-AMM</b> 1:9</p> <p><b>2:21-CV-01536-AMM</b> 1:15</p> <p><b>2:21-CV-1291-AMM</b> 1:3</p> <hr/> <p><b>3</b></p> <hr/> <p><b>3</b> 8:14 67:7 98:23 125:18, 22,23 126:20 183:5,7 197:18</p> <p><b>30</b> 33:12 50:6 180:15</p> <p><b>300152</b> 7:19</p> <p><b>311</b> 8:14</p> <p><b>332-600-9546</b> 6:9</p> <p><b>334-242-7300</b> 7:21</p> <p><b>334-269-3138</b> 6:19</p> <p><b>35203</b> 7:8</p> <p><b>35211</b> 16:23</p> <p><b>35222</b> 5:7,14</p> <p><b>36104</b> 6:18</p> <p><b>36130-0152</b> 7:20</p> <hr/> <p><b>4</b></p> <hr/> <p><b>4</b> 8:11 189:16</p> <p><b>40</b> 6:7 165:3,4,14 180:15</p> <p><b>400</b> 152:11,16</p> <p><b>445</b> 6:16</p> <p><b>44th</b> 72:2</p> <p><b>48</b> 43:3</p>	<hr/> <p><b>5</b></p> <hr/> <p><b>5</b> 8:12 101:12 113:11 119:20</p> <p><b>5/8/27</b> 200:23</p> <p><b>50</b> 48:17,23 49:2,7,17 114:22 158:15</p> <p><b>50-50</b> 35:16 40:10 93:7,9</p> <p><b>501</b> 7:18</p> <p><b>52</b> 35:20 36:5 43:2,12 114:22</p> <p><b>53</b> 35:20 36:5</p> <p><b>56</b> 158:15</p> <hr/> <p><b>6</b></p> <hr/> <p><b>6</b> 55:12 58:5 79:20 90:5 146:3</p> <p><b>62</b> 109:18</p> <p><b>65</b> 54:14,16 109:12,17 131:13</p> <p><b>6th</b> 137:15</p> <hr/> <p><b>7</b></p> <hr/> <p><b>7</b> 54:10 55:11 57:10 79:4, 22 84:7,8 88:1 91:23 92:4 93:9 105:18 128:3 158:14 163:5 184:10</p> <p><b>70</b> 54:14,16 109:14,17 131:13</p> <p><b>77</b> 8:11</p> <p><b>78</b> 6:17</p> <hr/> <p><b>8</b></p> <hr/> <p><b>8</b> 87:5,20,21 88:1 105:18</p> <p><b>8000</b> 6:16</p> <p><b>825</b> 5:6</p> <p><b>86</b> 23:15</p> <p><b>89</b> 23:16</p>
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# EXHIBIT 4

## 2021 Plan



**2021 Plan (Legislature)**

<b>Plan Characteristics</b>	<b>2021 Plan</b>
Maximum Population Deviation	1
Contiguous	Yes
County Splits (out of 67 counties)	6
Voting District Splits (out of 1,837 voting districts)	7
Municipality Splits (out of 462 municipalities)	30
Municipality Splits, excluding where at least 95% of population is together	19
Birmingham Split (% Population)	District 6: 30.2% District 7: 69.8%
Mobile (City) Split (% Population)	District 1: 100%
Core Black Belt (out of 18 counties)	District 2: 5½ counties* District 3: 2 counties District 7: 10½ counties
Compactness: Reock Score: Statewide	0.38
Compactness: Polsby-Popper Score: Statewide	0.22
Compactness: Population Polygon Score: Statewide	0.71
Compactness: Cut Edges: Statewide	3,230

\* Montgomery County is split between Districts 2 and 7 and counted as a "½" in each.

<b>District Characteristics</b>	<b>District 1</b>	<b>District 2</b>	<b>District 3</b>	<b>District 4</b>	<b>District 5</b>	<b>District 6</b>	<b>District 7</b>
Total Population	717,754	717,755	717,754	717,754	717,754	717,754	717,754
Compactness: Reock Score	0.40	0.50	0.36	0.36	0.30	0.31	0.43
Compactness: Polsby-Popper Score	0.20	0.26	0.25	0.19	0.32	0.15	0.19
Compactness: Population Polygon Score	0.96	0.84	0.76	0.38	0.89	0.64	0.52
Black Voting Age Population	25.6%	30.1%	25.0%	7.7%	18.1%	18.9%	55.3%



### 2021 Plan Election Performance Analysis

The percentage below is the margin of victory or defeat of the Black-preferred candidate (equal to the vote count for the Black-preferred candidate minus the vote count for the other top-vote getting candidate, divided by the total number of votes of those two candidates, excluding third-party or "other" votes). The average is a simple average (equally weighted) of all unique election contests without duplicates; in the event of a duplicate, the Legislature's data was used.

Election Contest	District 1	District 2	District 3	District 4	District 5	District 6	District 7
Average	-28.4%	-31.5%	-33.5%	-56.4%	-29.5%	-34.4%	32.1%
Count (out of 17 contests)	0	0	0	0	0	0	17
<b>Data Supplied by the Legislature (Dr. Trey Hood)</b>							
2017 U.S. Senate	-1.7%	-8.7%	-5.9%	-36.4%	-0.4%	-2.4%	52.1%
2018 Attorney General	-19.4%	-22.4%	-27.2%	-48.7%	-22.1%	-26.2%	37.2%
2018 Auditor	-22.8%	-26.5%	-29.9%	-53.7%	-24.2%	-29.7%	34.6%
2018 Governor	-21.2%	-28.6%	-29.1%	-49.6%	-23.0%	-23.8%	35.9%
2018 Lt. Governor	-24.6%	-28.7%	-30.7%	-55.8%	-26.6%	-31.1%	34.2%
2018 Secretary of State	-24.2%	-28.4%	-30.3%	-55.3%	-25.3%	-30.5%	33.8%
2020 President	-28.6%	-29.7%	-34.4%	-62.4%	-27.5%	-30.4%	32.4%
2020 U.S. Senate	-21.8%	-24.6%	-29.6%	-55.9%	-21.0%	-25.3%	35.5%
2022 Attorney General	-40.0%	-41.0%	-45.7%	-71.3%	-37.6%	-39.1%	24.4%
2022 Governor	-43.0%	-44.2%	-48.5%	-74.3%	-43.5%	-43.5%	23.0%
2022 Secretary of State	-39.4%	-41.3%	-45.9%	-71.7%	-38.0%	-39.6%	25.6%
2022 U.S. Senate	-41.5%	-42.1%	-46.2%	-71.6%	-39.0%	-39.7%	24.3%
<b>Data Supplied by the Milligan Plaintiffs (Dr. Baodong Liu)</b>							
2014 Auditor	-30.6%	-32.9%	-29.9%	-42.7%	-35.4%	-52.1%	29.3%
2014 Lt. Governor	-31.0%	-34.4%	-30.7%	-38.4%	-38.1%	-49.8%	31.0%
2014 Secretary of State	-30.9%	-35.4%	-32.2%	-46.3%	-39.5%	-53.2%	31.1%
2018 Auditor	-22.8%	-26.7%	-29.4%	-53.7%	-24.2%	-29.6%	34.5%
2018 Lt. Governor	-24.6%	-28.9%	-30.3%	-55.8%	-26.6%	-31.0%	34.1%
2018 Pub. Serv. Comm'n	-23.4%	-27.1%	-29.0%	-53.9%	-24.3%	-29.8%	35.5%
2020 President	-28.8%	-32.9%	-29.3%	-60.6%	-27.9%	-30.8%	31.3%
2022 Supreme Court	-38.8%	-39.9%	-44.2%	-69.9%	-36.5%	-39.1%	25.3%
2022 Attorney General	-40.0%	-41.1%	-45.3%	-71.3%	-37.6%	-39.1%	24.4%
2022 Governor	-43.0%	-44.4%	-48.2%	-74.3%	-43.5%	-43.5%	23.0%
2022 Secretary of State	-39.4%	-41.5%	-45.5%	-71.7%	-38.0%	-39.5%	25.6%
2022 U.S. Senate	-41.5%	-42.3%	-45.9%	-71.6%	-39.0%	-39.7%	24.3%



# EXHIBIT 5

## 2023 Plan





**2023 Plan (Legislature)**

<b>Plan Characteristics</b>	<b>2023 Plan</b>
Maximum Population Deviation	1
Contiguous	Yes
County Splits (out of 67 counties)	6
Voting District Splits (out of 1,837 voting districts)	11
Municipality Splits (out of 462 municipalities)	32
Municipality Splits, excluding where at least 95% of population is together	18
Birmingham Split (% Population)	District 6: 25.3% District 7: 74.7%
Mobile (City) Split (% Population)	District 1: 100%
Core Black Belt (out of 18 counties)	District 2: 9 counties District 7: 9 counties
Compactness: Reock Score: Statewide	0.41
Compactness: Polsby-Popper Score: Statewide	0.28
Compactness: Population Polygon Score: Statewide	0.75
Compactness: Cut Edges: Statewide	3,246

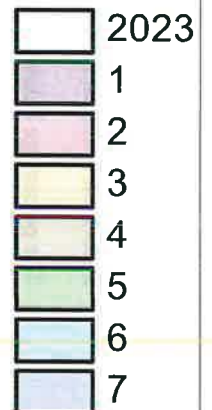
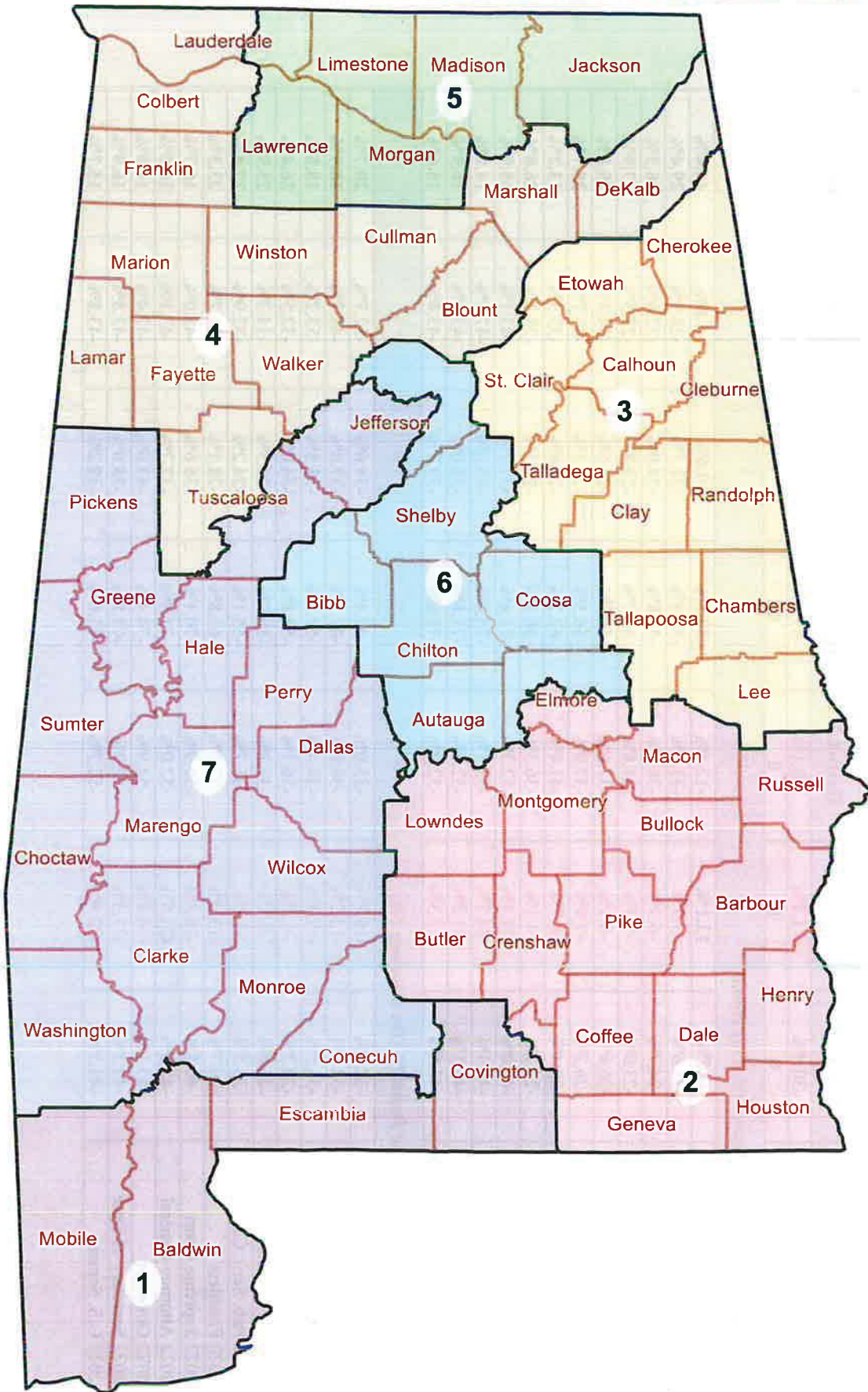
<b>District Characteristics</b>	<b>District 1</b>	<b>District 2</b>	<b>District 3</b>	<b>District 4</b>	<b>District 5</b>	<b>District 6</b>	<b>District 7</b>
Total Population	717,754	717,755	717,754	717,754	717,754	717,754	717,754
Compactness: Reock Score	0.31	0.61	0.41	0.33	0.37	0.46	0.40
Compactness: Polsby-Popper Score	0.24	0.37	0.35	0.20	0.40	0.18	0.23
Compactness: Population Polygon Score	0.98	0.83	0.91	0.41	0.96	0.59	0.59
Black Voting Age Population	24.6%	39.9%	20.7%	7.2%	18.3%	19.3%	50.7%



**2023 Plan Election Performance Analysis**

The percentage below is the margin of victory or defeat of the Black-preferred candidate (equal to the vote count for the Black-preferred candidate minus the vote count for the other top-vote getting candidate, divided by the total number of votes of those two candidates, excluding third-party or "other" votes). The average is a simple average (equally weighted) of all unique election contests without duplicates; in the event of a duplicate, the Legislature's data was used.

<b>Election Contest</b>	<b>District 1</b>	<b>District 2</b>	<b>District 3</b>	<b>District 4</b>	<b>District 5</b>	<b>District 6</b>	<b>District 7</b>
Average	-30.4%	-11.4%	-40.1%	-57.7%	-29.3%	-37.3%	23.2%
Count (out of 17 contests)	0	1	0	0	0	0	17
<b>Data Supplied by the Legislature (Dr. Trey Hood)</b>							
2017 U.S. Senate	-3.2%	12.1%	-12.4%	-37.5%	-0.6%	-5.8%	44.4%
2018 Attorney General	-21.6%	-3.0%	-33.4%	-50.4%	-21.7%	-28.9%	29.4%
2018 Auditor	-24.7%	-6.3%	-36.5%	-54.8%	-24.0%	-32.6%	26.3%
2018 Governor	-23.0%	-9.3%	-34.8%	-50.3%	-22.8%	-27.5%	27.9%
2018 Lt. Governor	-26.6%	-8.1%	-37.6%	-56.7%	-26.5%	-34.4%	25.8%
2018 Secretary of State	-26.2%	-7.9%	-37.0%	-56.5%	-25.1%	-33.7%	25.7%
2020 President	-30.4%	-8.7%	-41.4%	-62.7%	-27.6%	-33.3%	23.2%
2020 U.S. Senate	-23.7%	-4.1%	-36.3%	-56.3%	-21.1%	-28.1%	26.8%
2022 Attorney General	-42.0%	-21.4%	-52.3%	-71.4%	-37.7%	-43.1%	15.9%
2022 Governor	-45.1%	-24.5%	-55.1%	-74.4%	-43.6%	-47.4%	14.0%
2022 Secretary of State	-41.5%	-21.2%	-52.6%	-71.8%	-38.0%	-43.8%	16.9%
2022 U.S. Senate	-43.5%	-22.3%	-52.9%	-71.6%	-39.2%	-43.8%	15.6%
<b>Data Supplied by the Milligan Plaintiffs (Dr. Baodong Liu)</b>							
2014 Auditor	-32.8%	-16.7%	-35.0%	-47.4%	-34.6%	-52.7%	20.7%
2014 Lt. Governor	-32.9%	-13.2%	-38.0%	-42.5%	-37.0%	-49.7%	18.9%
2014 Secretary of State	-33.5%	-12.8%	-39.4%	-51.5%	-38.5%	-53.2%	18.8%
2018 Auditor	-24.7%	-6.3%	-36.1%	-54.8%	-24.0%	-32.5%	26.4%
2018 Lt. Governor	-26.6%	-8.1%	-37.2%	-56.7%	-26.5%	-34.3%	25.9%
2018 Pub. Serv. Comm'n	-25.5%	-6.2%	-35.7%	-55.1%	-24.2%	-32.9%	27.4%
2020 President	-30.7%	-13.0%	-37.9%	-61.8%	-28.1%	-34.2%	23.3%
2022 Supreme Court	-40.8%	-20.2%	-50.9%	-70.1%	-36.6%	-43.0%	16.7%
2022 Attorney General	-42.0%	-21.5%	-52.0%	-71.4%	-37.7%	-43.1%	16.0%
2022 Governor	-45.1%	-24.5%	-54.9%	-74.4%	-43.6%	-47.4%	14.0%
2022 Secretary of State	-41.5%	-21.3%	-52.3%	-71.8%	-38.0%	-43.8%	16.9%
2022 U.S. Senate	-43.5%	-22.4%	-52.7%	-71.6%	-39.2%	-43.8%	15.7%





## APPENDIX A

### Remedial Plan 3

