

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

BOBBY SINGLETON, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	Civil Action No.:
v.)	2:21-cv-01291-AMM
)	
WES ALLEN, in his official)	THREE-JUDGE COURT
capacity as Alabama Secretary of State,)	
<i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

**DEFENDANT SECRETARY OF STATE WES ALLEN'S
RESPONSES TO SINGLETON PLAINTIFFS' SECOND SET OF
REQUESTS FOR ADMISSION**

Pursuant to Fed. R. Civ. P. 26 and Fed. R. Civ. P. 36, Alabama Secretary of State Wes Allen, hereby responds to *Singleton* Plaintiffs' Second Set of Requests For Admission.

General Statement

Secretary Allen has relied on the information presently available to him. Further or different information may be discovered during the discovery phase of the litigation. Secretary Allen will amend his Objections and Responses to the extent required pursuant to Fed. R. Civ. P. 26.

Secretary Allen's Responses to each request are made subject to all objections as to privilege, competence, relevance, materiality, propriety, and admissibility, as

well as any and all other obligations and grounds that would require the exclusion of evidence. Secretary Allen reserves the right to make any and all such objections at the appropriate time.

Secretary Allen's answers to each and every request regarding any person's actions or intent in drafting or considering any districting map are subject to the understanding (and do not waive the arguments) that: whatever the purpose of any person involved in preparing or considering a map, "[t]he 'cat's paw' theory has no application to legislative bodies," *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2350 (2021); "determining the intent of the legislature is a problematic and near-impossible challenge," *Greater Birmingham Ministries v. Sec'y of State for State of Alabama*, 992 F.3d 1299, 1324 (11th Cir. 2021); and, "the good faith of a state legislature must be presumed," *Miller v. Johnson*, 515 U.S. 900, 915 (1995).

General Objections

Secretary Allen objects to the Instructions to the extent that they purport to impose any requirements or obligations different from those contained in the Federal Rules of Civil Procedure, the local Rules of this Court, applicable orders of the Court, and/or related agreements.

Secretary Allen further objects to each and every request that is not "separately stated" as required by Fed. R. Civ. P. 36(a)(2).

REQUESTS FOR ADMISSION

Request for Admission No. 56: Alabama’s “traditional districting principles” are policies “embedded in the political values, traditions, customs, and usages of the State of Alabama.”

Response: Admitted.

Request for Admission No. 57: Both the 2001 and 2011 maps maintained the cores of districts, changing them only to equalize population. The 2011 map largely built off the 2001 map, which itself built off the 1992 map.

Response: To the extent this request focuses on the intent of past Legislatures, Defendant objects on grounds that the intent of those involved in adopting a prior plan is not relevant to the intent of the Legislature in 2021.

Further, by responding, Defendant’s answer is not intended to be, and shall not be construed as, agreement with Plaintiffs’ characterization of any facts, circumstances, or legal obligations. Defendant reserves the right to contest any such characterization as inaccurate and objects to the requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Without waiving these objections, Defendant states as follows:

Admitted that the 2001 and 2011 maps maintained the cores of districts, changing those cores only to equalize population, subject to the understanding that equalizing population requires the application of traditional redistricting principles,

including considerations of communities of interest, compactness, natural boundaries, etc., and policy choices inherent in the application of such principles.

Request for Admission No. 58: A goal in drafting the 2011 map was to make sure that District 7 remained a majority-Black district, and the map's drafter, Randolph Hinaman, achieved that goal through race-conscious line-drawing.

Response: To the extent this request focuses on the intent of past Legislatures, Defendant objects on grounds that the intent of those involved in adopting a prior plan is not relevant to the intent of the Legislature in 2021. Defendant also objects that the request is vague in that it does not identify whose "goal" is at issue.

Without waiving these objections, Defendant states as follows:

Admitted that one goal of Mr. Hinaman, in drafting a map that would later be considered and adopted by the Legislature as the 2011 map, was to fulfill Congresswoman Sewell's desire to maintain a black majority in District 7 by not dramatically altering the makeup of the district. Otherwise denied.

Request for Admission No. 59: Mr. Hinaman, who had drafted the 2011 plan, was retained to draw the 2021 plan. He was retained not by the State of Alabama, but by a private organization called Citizens for Fair Representation or Alabamians for Fair Representation (Mr. Hinaman could not recall the exact name).

Response: Admitted that Mr. Hinaman was retained by an entity called Citizens for Fair Representation, Inc. to provide the Legislature with a draft of the

2021 plan. Further admitted that Mr. Hinaman did not recall the exact name of the entity at his deposition. Otherwise denied.

Request for Admission No. 60: Although Mr. Hinaman was provided with the Redistricting Guidelines, no member of the Legislature had any substantive involvement with the creation of the 2021 map. Mr. Hinaman provided updates to the Chairs of the Reapportionment Committee, but they gave him no feedback.

Response: Defendant objects on grounds that “creation of the 2021 map” and “any substantive involvement” are vague.

Without waiving that objection, Defendant states as follows:

To the extent “creation of the 2021 map” refers to the drafting process that led to the map introduced in the Alabama Legislature in as HB1, admitted that the Chairs of the Reapportionment Committee did not make particular requests to Mr. Hinaman regarding how to draft that map beyond the redistricting guidelines. Otherwise denied.

Request for Admission No. 61: Mr. Hinaman “‘used [the] 2011 congressional map’—or, ‘the cores of the existing districts’—as his ‘starting point in drafting the 2021 congressional map.’”

Response: Admitted that Mr. Hinaman used the 2011 congressional map—or, the cores of the existing districts—as his starting point in drafting the map that would be introduced in the Alabama Legislature in 2021 as HB1. Otherwise, denied.

Request for Admission No. 62: Mr. Hinaman followed the Redistricting Guidelines as he drafted a map for the Legislature. DX144:35. One of the guidelines was “to try to split less precincts and less counties.” DX144:24.

Response: Admitted with the understanding that Mr. Hinaman drafted a map for the Legislature’s consideration.

Request for Admission No. 63: When drawing the 2021 map, Mr. Hinaman viewed the core of an existing district as the key counties that make up the current district, current as of 2011.

Response: Admitted that when drawing the map that would later be introduced in the Alabama Legislature in 2021 as HB1, Mr. Hinaman viewed the core of an existing district as the key counties that made up the then-current district, including the county of the incumbent’s residence, which had been adopted by the Legislature in 2011.

Request for Admission No. 64: For Mr. Hinaman, the core of District 7 is the Black Belt counties from Choctaw through Lowndes, and portions of Tuscaloosa and Jefferson.

Response: Admitted.

Request for Admission No. 65: Mr. Hinaman met with Alabama’s U.S. House members or their staffs to discuss the 2021 map. He informed them how much population each district would need to gain or lose to achieve population equality. He discussed their requests for changes to the shape of their districts, and he generally attempted to accommodate these requests.

Response: Admitted.

Request for Admission No. 66: Mr. Hinaman did not attempt to alter the racial composition of District 7. He did blunt the “finger” that extends into Jefferson County and add new precincts in Homewood [in] southwestern Jefferson County, but he did so in the interest of making the district more compact.

Response: Admitted that Mr. Hinaman drafted a draft congressional map for the Legislature’s consideration in 2021 without considering the racial composition of the districts and that he had neither the intent to alter, nor the intent to maintain, the racial composition of District 7; rather, he drafted the map without any racial goals or targets for any district, and he did so without racial numbers visible in the software he used. Admitted further that drawing a more compact district was one interest served by changes in Jefferson County.

Request for Admission No. 67: Mr. Hinaman did not substantially alter the race-based splits of Tuscaloosa County (between Districts 4 and 7) or Montgomery County (between Districts 2 and 7).

Response: Defendant objects to the phrase “substantially alter” as vague. Defendant further objects to the phrase “race-based” as vague and question-begging.

Without waiving that objection, Defendant states as follows:

Admitted that Mr. Hinaman’s 2021 map generally retained the cores of the 2011 plan, and that for both maps parts of Tuscaloosa County are in Districts 4 and 7, and parts of Montgomery County are in Districts 2 and 7. Otherwise denied.

Request for Admission No. 68: Compared to the 2011 plan, the 2021 map represents a “least change approach.” About 90% of the total population and 90% of the Black population of the 2011 version of District 7 remained there in 2021.

Response: Admitted.

Request for Admission No. 69: In The 2021 map, there were no wholesale significant changes in the geography except what appears to be necessary in order to achieve one person one vote balance population requirements.

Response: Defendant objects to the phrase “wholesale significant changes” as vague and subject to multiple interpretations.

Without waiving that objection, Defendant states as follows:

Admitted that the 2021 plan was a “least changes” plan that generally preserved the cores of preexisting districts. Admitted that changes were made that were necessary to equalize population, subject to the understanding that equalizing population requires the application of traditional redistricting principles, including considerations of communities of interest, compactness, natural boundaries, etc., and policy choices inherent in the application of such principles.

Request for Admission No. 70: Because District 7 was under-populated by 53,143 persons, Act No. 2021-555 added to District 7 16,835 more residents of Clarke County, 27,369 more residents of Montgomery County, 30,919 more residents of Tuscaloosa County, and 5,176 more residents of Jefferson County. These additions necessarily added more white population and reduced the District 7 black voting-age majority from 60.16% to 54.22%.

Response: Admitted that District 7 was under-populated by 53,143 persons; that Act No. 2021-555 added to District 7 7,783 more residents of Clarke County,

18,137 more residents of Montgomery County, 21,867 more residents of Tuscaloosa County, and 5,176 more residents of Jefferson County; and, that the percentage of voting-age people in District 7 who were single-race black under the 2011 plan based on 2010 Census data was 60.16% while the percentage of voting-age people in District 7 who were single-race black in the 2021 plan based on 2020 Census data was 54.22%. Otherwise denied.

Request for Admission No. 71: After drafting his map, Mr. Hinaman reviewed the racial makeup of its districts. He assumed that if District 7 had a Black Voting Age Population of less than 50%, he and the Reapportionment Committee's counsel would have looked for a basis to add Black people to the district.

Response: Admitted that, after drafting a map for the Legislature's consideration, Mr. Hinaman reviewed the racial makeup of its districts. Admitted that Mr. Hinaman was asked during his deposition about a hypothetical situation in which District 7 had a Black Voting Age Population of less than 50%, and that he testified that he assumed that in that hypothetical world there would have been an analysis to determine if there was a strong basis in evidence to believe that Section 2 of the Voting Rights Act required Alabama to add black voters to that hypothetical district. Otherwise denied.

Request for Admission No. 72: If District 7 in Mr. Hinaman's map had had a Black Voting Age Population of less than 50%, the Reapportionment Committee would have requested that Mr. Hinaman draw a new map with at least 50% Black Voting Age Population in District 7.

Response: Denied.

Request for Admission No. 73: Representative Sewell told Mr. Hinaman that she would prefer to have a majority-Black district. After drawing his map, Mr. Hinaman reported to Representative Sewell that District 7 had a Black Voting Age Population of 54.22%. Representative Sewell did not ask for any change.

Response: Defendant lacks sufficient information to admit or deny that Representative Sewell told Mr. Hinaman that she would prefer to have a majority-black district (Mr. Hinaman testified that he was “pretty confident,” but not certain, that she said that). Denied that Mr. Hinaman had a goal of creating a majority-black district. Admitted that Representative Sewell did not request changes to Mr. Hinaman’s draft of District 7 when she was told that it had 54.22% BVAP.

Request for Admission No. 74: Before the Legislature voted on a districting plan, James Blacksher (counsel for the *Singleton* plaintiffs) and Louis Hines (of the Center for Leadership and Public Policy at Alabama State University) submitted three alternative plans. The first kept counties whole and had a maximum population deviation of 2.47% (the “Whole County Plan”). The second followed the Whole County Plan but made splits in three counties to reduce the maximum population deviation to 0.69% (the “Narrow Deviation Plan”). The third followed the Whole County plan but made splits in six counties to reduce the population deviation to zero (the “Zero Deviation Plan”). These plans were introduced in the Legislature by Senator Bobby Singleton.

Response: Admitted that three plans were introduced by Senator Singleton: one with whole counties with a population deviation of 2.47%, one with a population deviation of 0.69%, and, one with zero % deviation. Defendant lacks sufficient information to admit or deny the remainder of this request.

Request for Admission No. 75: The Black Belt, named for the color of its soil, is well recognized as a community of interest.

Response: Defendant objects on the ground that the area constituting the “Black Belt” has been defined in different ways, which makes this request vague.

Without waiving that objection, Defendant states as follows:

Admitted that the Black Belt is named for the color of its soil and that it has been recognized as a community of interest. Otherwise denied.

Request for Admission No. 76: The Defendants’ expert Thomas Bryan agreed that the Whole County Plan has the smallest possible population deviation for a plan that keeps counties whole and “still make[s] some kind of districting sense for Alabama.” It is possible to draw maps with smaller deviations without splitting counties, but they are “ridiculous looking” and “will all virtually fail if you hold them to any other criteria.”

Response: Denied.

Request for Admission No. 77: Achieving zero deviation in Alabama requires splitting at least six counties (unless a county is split among more than two districts). The *Singleton Zero Deviation* Plan therefore splits the minimum number of counties to achieve zero deviation.

Response: Admitted that achieving zero deviation in Alabama, which has seven Congressional districts, requires splitting at least six counties (unless a county is split among more than two districts.) Admitted that the *Singleton Zero Deviation* Plan splits the minimum number of counties to achieve zero deviation unless it had split a county more than twice.

Request for Admission No. 78: Counties are integral to the civic life of Alabama. Elections are administered at the county level, and the Secretary of State reports results at the county level as well. Alabamians elect county sheriffs, county commissioners, county judges, county tax collectors, county tax assessors, and county boards of education. Political parties organize at the county level. Counties cluster individuals around a sense of community, and ordinary citizens identify themselves by the county in which they reside.

Response: Admitted that elections are administered at the county level; the Secretary of State reports results at the county level as well; Alabamians elect county sheriffs, county commissioners, county judges, county tax collectors, county tax assessors, and county boards of education; and, that some political parties organize at the county level. Defendant otherwise lacks sufficient information to admit or deny the remaining contentions.

Request for Admission No. 79: For purposes of representation in Congress, it is better for a county not to be split across districts.

Response: Defendant objects to this request on grounds that the term “better” as used here is vague. Without waiving this objection, Defendant states as follows:

Admitted that there are often advantages to keeping counties whole when practical in a redistricting plan. Denied that it is always “better” to do so.

Request for Admission No. 80: Reuniting Jefferson County would give Black Jefferson County voters, who are predominantly in the Seventh District, greater control over issues affecting Jefferson County. “It brings the folks who live in Jefferson County together for political and for cultural purposes.”

Response: Denied.

Request for Admission No. 81: Keeping counties whole limits the opportunity to perform racial gerrymandering.

Response: Defendant objects that “limits the opportunity to perform racial gerrymandering” is vague and subject to multiple interpretations.

Without waiving that objection, Defendant states as follows:

Denied.

Request for Admission No. 82: In Alabama elections, the candidate of choice for Black voters in a general election is the Democrat. Experts in this case estimated the share of Black voters who vote for the Democratic candidate at approximately 92% (Bryan), 93%–96% (Liu), and 97%–99% (Hood).

Response: Defendant objects on grounds that one cannot “assum[e] from a group of voters’ race that they think alike, share the same political interests, and will prefer the same candidates at the polls.” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433 (2006).

Without waiving that objection, Defendant states as follows:

Admitted that experts in this case estimated the share of Black voters who vote for the Democratic candidate at approximately 92% (Bryan), 93%–96% (Liu), and 97%–99% (Hood).

Request for Admission No. 83: Any district including all of Jefferson County would be a Democratic performing district.

Response: Defendant objects that “Democratic performing district” is vague and subject to multiple interpretations.

Without waiving that objection, Defendant states as follows:

Defendant does not have sufficient information to admit or deny this request.

Request for Admission No. 84: Black voters will generally choose the Democratic nominee in Districts 6 and 7 in the Whole County Plan, and there is enough White crossover voting to give Black voters the opportunity to elect the candidate of their choice in the general election.

Response: Defendant objects on grounds that one cannot “assum[e] from a group of voters’ race that they think alike, share the same political interests, and will prefer the same candidates at the polls.” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433 (2006).

Without waiving that objection, Defendant states as follows:

Defendant does not have sufficient information to admit or deny this request.

Request for Admission No. 85: Before enacting the 2021 plan, the Legislature performed no meaningful inquiry into whether the Voting Rights Act required the creation of a majority-Black district.

Response: Defendant objects to the phrase “meaningful inquiry” as vague. Defendant objects to the phrase “whether the Voting Rights Act required the creation of a majority-Black district” as vague and confusing, for “the Constitution does not place an affirmative obligation upon the legislature to avoid creating districts that turn out to be heavily, even majority, minority. It simply imposes an obligation not

to create such districts for predominantly racial, as opposed to political or traditional, districting motivations.” *Easley v. Cromartie*, 532 U.S. 234, 249 (2001).

Without waiving this objection, Defendant states as follows:

Denied.

Request for Admission No. 86: After the 2021 plan was enacted, neither the Legislature nor the State of Alabama performed a meaningful inquiry into whether the Voting Rights Act required the creation of a majority-Black district.

Response: Defendant objects to the phrase “meaningful inquiry” as vague. Defendant objects to the phrase “whether the Voting Rights Act required the creation of a majority-Black district” as vague and confusing, for “the Constitution does not place an affirmative obligation upon the legislature to avoid creating districts that turn out to be heavily, even majority, minority. It simply imposes an obligation not to create such districts for predominantly racial, as opposed to political or traditional, districting motivations.” *Easley v. Cromartie*, 532 U.S. 234, 249 (2001).

Without waiving this objection, Defendant states as follows:

Denied.

Request for Admission No. 87: Before the 2021 Plan was enacted, the Chairs of the Reapportionment Committee, Senator Jim McClendon and Representative Chris Pringle received “talking points” from Mr. Hinaman and Reapportionment Committee counsel Dorman Walker stating that the Voting Rights Act required a majority-minority district, without providing any analysis explaining why that would be the case. The talking points advised voting against the plan supported by the League of Women Voters (the Singleton Whole County Plan) because it violated Section 2 of the Voting Rights Act by not including a majority-minority district. In

other words, the chairs of the relevant committee were given guidance that established a specific racial threshold for a Congressional district of more than 50% Black Voting Age Population.

Response: Admitted that before the 2021 Plan was enacted, the Chairs of the Reapportionment Committee, Senator Jim McClendon and Representative Chris Pringle, received “talking points” from Reapportionment Committee counsel Dorman Walker advising against the Whole County Plan for various reasons. Denied that the chairs of the relevant committee were given guidance that established a specific racial threshold for a Congressional district of more than 50% Black Voting Age Population. Otherwise denied.

Request for Admission No. 88: Both Representative Pringle and Senator McClendon used these talking points in debate on redistricting.

Response: Admitted that talking points were used by Representative Pringle and Senator McClendon in debate.

Request for Admission No. 89: Senator McClendon would not vote for the Whole County Plan because it did not have a majority-minority district.

Response: Admitted that Senator McClendon, when asked in a deposition why he personally voted against the Singleton plan, answered: “I think the blatant problem with his map was that no minority candidate had a majority district. He had -- ... I think he drew two districts they called opportunity districts. But no minority candidate had a majority of the voters in either of those districts.” Otherwise denied.

Request for Admission No. 90: After the 2000 and 2010 censuses, Alabama was covered by Section 5 of the Voting Rights Act and believed it was required to keep a majority-black congressional district in order to avoid retrogression and for its plan to be precleared.

Response: Admitted that after the 2000 and 2010 censuses, Alabama was covered by Section 5 of the Voting Rights Act; admitted that retrogression would affect preclearance of a congressional plan. Otherwise denied.

Request for Admission No. 91: Supreme Court precedent permits a State to have minor population deviations in congressional districts if the State can justify each deviation by pointing to an important State interest.

Response: Defendant objects to the term “minor population deviation” as vague. Defendant objects to the term “an important State interest” as vague and subject to multiple interpretations.

Subject to that objection, Defendant states as follows:

Admitted.

Request for Admission No. 92: The 1991 guidelines adopted by the Legislature’s Reapportionment Committee, before the 1992 racial gerrymander was created, emphasized preserving county boundaries. “Counties should be used as district building blocks where possible, and to the extent consistent with other aspects of these criteria.” 785 F. Supp. at 1494 (quoting the guidelines). “Preservation of political subdivisions promotes efficient representation, empowers a constituency’s ability to organize productively, and serves as a deterrent to partisan gerrymandering.” 785 F. Supp. at 1498 (citations omitted).

Response: Defendant objects to the use of the phrase “racial gerrymander.”

Further, by responding, Defendant’s answer is not intended to be, and shall not be

construed as, agreement with Plaintiffs' characterization of any facts, circumstances, or legal obligations. Defendant reserves the right to contest any such characterization as inaccurate and objects to the requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation. Without waiving these objections, Defendant states as follows.:

Admitted that the 1991 guidelines contained the quoted language. Otherwise denied.

Request for Admission No. 93: The Plaintiffs' proposed Whole County Plan uses the official 2020 census data released on August 12, 2021. With a maximum deviation of only 2.47%, it contains a Black Belt District 7 that is only 0.11% above ideal population and has 49.9% black registered voters, and a Jefferson-Bibb-Perry-Hale District 6 that is only 0.36% above ideal population and has 42.3% black registered voters.

Response: Admitted that Plaintiffs' proposed Whole County Plan uses the official 2020 census data released on August 12, 2021; admitted that Plaintiffs' proposed Whole County Plan has a maximum deviation of 2.47%; admitted that Plaintiffs' proposed Whole County Plan contains a Black Belt District 7 that is 0.11% above ideal population and has 49.9% black registered voters and a Jefferson-Bibb-Perry-Hale District 6 that is 0.36% above ideal population and has 42.3% black registered voters. Otherwise denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2023, I served the foregoing all counsel of record by certified mail.

/s/ James W. Davis
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