

IN THE CHANCERY COURT OF TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT

TELISE TURNER,)
GARY WYGANT, and)
FRANCIE HUNT,)

Plaintiffs,)

v.)

BILL LEE, Governor,)
TRE HARGETT, Secretary of State,)
MARK GOINS, Tennessee Coordinator)
of Elections; all in their official)
capacity only,)

Defendants.)

CASE NO. 22-0287-IV

THREE-JUDGE PANEL
CHANCELLOR PERKINS, CHIEF
CHANCELLOR MARONEY
CIRCUIT JUDGE SHARP

PLAINTIFFS' RESPONSE TO DEFENDANTS'
STATEMENT OF UNDISPUTED MATERIAL FACTS AND
PLAINTIFFS' ADDITIONAL STATEMENT OF MATERIAL FACT

Pursuant to Tenn. R. Civ. P. 56.03, Plaintiffs respond to Defendants' Statement of Undisputed Facts as follows and include an additional statement of material fact.

1. The Tennessee House of Representatives established a redistricting website containing a map of the then-current House districts and a link to each specific district. (TRO Resp. Ex. 1, Himes Aff., p. 5).

RESPONSE: Agreed.

2. Information concerning the redistricting process was posted to the website and made available to the public as it became available. (TRO Resp. Ex. 1, Himes Aff. p. 5).

RESPONSE: Agreed.

3. On August 25, 2021, the Speaker of the House of Representatives appointed the 16-member House Select Committee on Redistricting ("House Committee"), including the Chair

and three Area Coordinators. (TRO Resp. Ex. 1, Himes Aff., p. 6).

RESPONSE: Agreed.

4. The House Committee held its first public meeting on September 8, 2021. At that meeting, House Committee counsel made a presentation about the redistricting process. (TRO Resp. Ex. 1, Himes Aff., p. 6; Ex. Himes 3).

RESPONSE: Agreed.

5. As part of that presentation, counsel discussed the 2020 Census numbers—noting that the State’s population growth was vastly uneven, with thirty (30) counties experiencing negative growth and seventeen (17) counties experiencing positive growth in excess of 10%. There were also six counties whose growth was essentially stagnant (less than 1%), including Shelby and Sullivan Counties. (TRO Resp. Ex. 1, Himes Aff. p. 6-7; Ex. Himes 3).

RESPONSE: Agreed.

6. Tenn. Code Ann. § 3-1-103(b)’s guidelines were first adopted by the General Assembly in 1992 in response to the redistricting cases in the 1980s: *State ex rel. Lockert v. Crowell*, 631 S.W.2d 702 (Tenn. 1982) (“*Lockert I*”), *State ex rel. Lockert v. Crowell*, 656 S.W.2d 836 (Tenn. 1983) (“*Lockert II*”), *Lincoln County v. Crowell*, 701 S.W.2d 602 (Tenn. 1985), and *State ex rel. Lockert v. Crowell*, 729 S.W.2d 88 (Tenn. 1987) (“*Lockert III*”). (TRO Resp. Ex. 1, Himes Aff., p. 7; Ex. Himes 3).

RESPONSE: Agreed the cited statutory guidelines were adopted in 1992. Plaintiffs have no knowledge concerning why the Legislature adopted the guidelines.

7. There were four (4) plans that were timely submitted to the House Committee. House Committee counsel conducted a standard basic evaluation of each of these plans. These

evaluations, which were provided to the House Committee members and posted on the House Committee’s website, evaluated the following aspects of each plan:

- Number of districts
- Number of majority-minority districts
- Overall variance (range) and the high and low
- Number of county splits
- Contiguity
- Unassigned areas
- Paired incumbents

(TRO Resp. Ex. 1, Himes Aff., p. 8; Ex. Himes 3).

RESPONSE: Agreed.

8. The Windrow Plan had the following details:

5 majority-minority districts

Overall Range = 24.23%

High = +11.48% (+8,013)

Low = -12.75% (-8,902)

County Splits: 26¹

Contiguity: No²

¹ Davidson, Hamilton, Knox, Rutherford, and Shelby counties are split despite having sufficient population to avoid that outcome. Of these counties, Knox and Rutherford counties are double split.

² Six unpopulated census blocks assigned to District 35 within District 34; one populated and one unpopulated census blocks assigned to District 63 within District 64; two unpopulated census blocks assigned to District 69 between Districts 55 and 67; two unpopulated census blocks assigned to District 69 within District 67; two populated census blocks assigned to District 92 within District 93.

Unassigned Areas: Yes³

(TRO Resp. Ex. 1, Himes Aff., p. 8; Ex. Himes 4).

RESPONSE: Plaintiffs are not redistricting map drawers, are not equipped to verify the stated data, and are not willing to expend the money to have their expert witness verify the stated figures. Notwithstanding that Plaintiffs have no personal knowledge of the stated figures, agreed for purposes of summary judgment only.

9. The Equity Alliance and Memphis A. Phillip Randolph Institute Plan had the following details:

2 majority-minority districts

Overall Range = 9.75%

High = +4.86% (+3,395)

Low = -4.89% (-3,411)

County Splits: 30⁴

Contiguity: No⁵

Unassigned Areas: None

(TRO Resp. Ex. 1, Himes Aff., p. 9; Ex. Himes 4).

RESPONSE: Plaintiffs are not redistricting map drawers, are not equipped to verify the stated data, and are not willing to expend the money to have their expert witness verify the stated

³ Multiple unassigned populated census blocks totaling 320 people.

⁴ Sullivan, Grainger, Lincoln, Wilson, Williamson, Sumner, Madison, Hardeman, Fayette, Lauderdale, Tipton, Davidson, Hamilton, Rutherford, and Shelby counties are split despite having sufficient population to avoid that outcome. Sullivan, Grainger, Lincoln, Wilson, Sumner, Williamson, Fayette and Lauderdale counties are double split. Rutherford, Hardeman, Tipton, and Madison counties are triple split. Shelby County is quintuple split.

⁵ One unpopulated census block assigned to District 44 within District 50; one unpopulated census block assigned to District 96 within District 90.

figures. Notwithstanding that Plaintiffs have no personal knowledge of the stated figures, agreed for purposes of summary judgment only.

10. The Wishart Plan had the following details:

6 majority-minority districts	
Overall Range =	9.02%
High =	+5.05% (+3,525)
Low =	-3.97% (-2,771)
County Splits:	30 ⁶
Contiguity:	No ⁷
Unassigned Areas:	None

(TRO Resp. Ex. 1, Himes Aff., p. 9; Ex. Himes 4).

RESPONSE: Plaintiffs are not redistricting map drawers, are not equipped to verify the stated data, and are not willing to expend the money to have their expert witness verify the stated

⁶ Sullivan, Hawkins, Sevier, Blount, Knox, Loudon, Campbell, McMinn, Bradley, Hamilton, Warren, Putnam, Rutherford, Williamson, Davidson, Maury, Sumner, Montgomery, Gibson, Madison, and Shelby counties are split despite having sufficient population to avoid that outcome. Bradley, McMinn, Gibson, Madison, Maury, Warren, Campbell, Sevier, and Putnam counties are double split. Sumner, Hawkins, Loudon, Hamilton, Blount, Sullivan, and Montgomery counties are triple split. Rutherford County is quadruple split. Williamson County is quintuple split. Davidson County is sextuple split.

⁷ One unpopulated census block assigned to District 14 between Districts 13 and 18; multiple populated and unpopulated census blocks assigned to district 24 between Districts 23 and 26; multiple populated and unpopulated census blocks assigned to District 24 within District 23; multiple populated and unpopulated census blocks assigned to District 26 within District 29; multiple populated and unpopulated census blocks assigned to District 27 within District 29; one unpopulated census block assigned to District 27 between Districts 26 and 29; one unpopulated census block assigned to District 29 within District 23; multiple populated census blocks assigned to District 45 within District 54; one populated census block assigned to District 6 within District 7; one unpopulated census block assigned to District 78 assigned to District 69; one unpopulated census block assigned to District 86 assigned to District 98; multiple populated and one unpopulated census blocks assigned to District 87 between Districts 85 and 91; one unpopulated census block assigned to District 88 between Districts 86 and 90; four unpopulated census blocks assigned to District 88 between Districts 97 and 98; one unpopulated census block assigned to District 88 between Districts 98 and 99; multiple populated and unpopulated census blocks assigned to District 89 between Districts 20 and 32; two unpopulated census blocks assigned to District 92 between Districts 29 and 39; multiple populated census blocks assigned to District 93 between Districts 84 and 87.

figures. Notwithstanding that Plaintiffs have no personal knowledge of the stated figures, agreed for purposes of summary judgment only.

11. The Orrin, Newton, Lichtenstein, Moore Plan had the following details:

10 majority-minority districts

Overall Range = 19.28%

High = +9.58% (+6,688)

Low = -9.70% (-6,772)

County Splits: 58⁸

Contiguity: No⁹

Unassigned Areas: Yes¹⁰

(TRO Resp. Ex. 1, Himes Aff., p. 9; Ex. Himes 4).

RESPONSE: Plaintiffs are not redistricting map drawers, are not equipped to verify the stated data, and are not willing to expend the money to have their expert witness verify the stated figures. Notwithstanding that Plaintiffs have no personal knowledge of the stated figures, agreed for purposes of summary judgment only.

⁸ More than thirty counties are split. Sullivan, Hawkins, Greene, Anderson, Knox, Hamilton, Lincoln, Bedford, White, Putnam, Sumner, Rutherford, Williamson, Davidson, Maury, Dickson, Montgomery, Humphreys, Madison, and Lauderdale counties are split despite having sufficient population to avoid that outcome. Lauderdale, Humphreys, Dickson, Sumner, Wilson, Hamilton, Washington, Sullivan, Bedford, Lincoln, Putnam, White, Anderson, Greene, and Hawkins counties are double split. Davidson, Williamson, Montgomery, Madison, and Maury counties are triple split. Rutherford County is quadruple split.

⁹ One unpopulated census block assigned to District 11 within District 17; one unpopulated census block assigned to District 14 within District 13; two populated and three unpopulated census blocks assigned to District 30 between Districts 22 and 29; one populated census block assigned to District 37 within District 46; one unpopulated census block assigned to District 48 within District 62; one unpopulated census block assigned to District 65 between Districts 61 and 69; one populated census block assigned to District 68 within District 69; one unpopulated census block assigned to District 82 within District 73; one unpopulated census block assigned to District 85 between Districts 84 and 87.

¹⁰ One unpopulated census block in District 81; one unpopulated census block in District 3; one unpopulated census block in District 22; one unpopulated census block in District 70.

12. The Democratic Caucus Plan A failed to meet the submission deadline and had the following details:

8 majority-minority districts

Overall Range =	6.71%
High =	+4.31% (+3,008)
Low =	-2.40% (-1,674)
County Splits:	35 ¹¹
Contiguity:	No ¹²
Unassigned Areas:	None

(TRO Resp. Ex. 1, Himes Aff., p. 9; Ex. Himes 5).

RESPONSE: Plaintiffs are not redistricting map drawers, are not equipped to verify the stated data, and are not willing to expend the money to have their expert witness verify the stated figures. Notwithstanding that Plaintiffs have no personal knowledge of the stated figures, agreed for purposes of summary judgment only.

13. In informing the Democratic Caucus that this plan had been rejected as untimely, House Committee counsel also explained the problems with their plan and, in particular, informed

¹¹ More than thirty counties are split. Blount, Sullivan, Washington, and Shelby counties are split despite having sufficient population to avoid that outcome. Blount, Sullivan, and Washington counties are double split.

¹² One unpopulated census block assigned to District 23 within District 24; one populated census block assigned to District 35 within District 33; two unpopulated census blocks assigned to District 44 within District 67; one unpopulated census block assigned to District 48 within District 37; one unpopulated census block assigned to District 50 within District 56; one populated and one unpopulated census blocks assigned to District 53 between Districts 57 and 63; one populated census block assigned to District 53 within District 57; one populated census block assigned to District 61 within District 63; one populated census block assigned to District 63 with District 65; one populated census block assigned to District 63 with District 77; one unpopulated census block assigned to District 67 within District 89; one unpopulated census block assigned to District 7 within District 19; one unpopulated census block assigned to District 7 between Districts 19 and 22; one unpopulated census block assigned to District 83 within District 85; one unpopulated census block assigned to District 85 with District 84; one unpopulated census block assigned to District 87 between Districts 83 and 91; one unpopulated census block assigned to District 91 within District 86; one unpopulated census block assigned to District 99 between Districts 88 and 94.

them that the double splits of Sullivan, Washington, Wilson and Blount Counties and that the splits of Shelby, Davidson and Hamilton County appeared to be in violation of Art. II, § 5 of the Tennessee Constitution as interpreted by the Tennessee Supreme Court in *Lockert II*. (TRO Resp. Ex. 1, Himes Aff., p. 9-10).

RESPONSE: Agreed for purposes of summary judgment only.

14. In response, the Democratic Caucus submitted Democratic Caucus Plan B which had the following details:

13 majority-minority districts
Overall Range = 9.72%
High = +4.98% (+3,552)
Low = -4.74% (-3,311)
County Splits: 23¹³
Contiguity: Yes
Unassigned Areas: None

(TRO Resp. Ex. 1, Himes Aff., p. 10; Ex. Himes 6).

RESPONSE: Plaintiffs are not redistricting map drawers, are not equipped to verify the stated data, and are not willing to expend the money to have their expert witness verify the stated figures. Notwithstanding that Plaintiffs have no personal knowledge of the stated figures, agreed for purposes of summary judgment only.

15. No member of the House Committee made a motion to approve either the Democratic Caucus plans or any of the other four plans submitted. Instead, the only motion made

¹³ Shelby County is split but has sufficient population to avoid that outcome.

was to approve the plan that counsel had prepared for the House Committee. (TRO Resp. Ex. 1, Himes Aff., p. 14).

RESPONSE: Agreed, in the context of the two meetings of the House Select Committee on Redistricting, which took place on September 8, 2021, and December 17, 2021.

16. The ultimately adopted House map has the following details:

13 majority-minority districts

Overall Range = 9.90%

High = +5.09% (+3,552)

Low = -4.81% (-3,361)

County Splits: 30

Contiguity: Yes

Unassigned Areas: No

(TRO Resp., Ex. 1, Himes Aff., p. 14-15).

RESPONSE: Agreed.

17. Plaintiff Turner does not reside in Davidson County or any other non-consecutively numbered county. (Third Amend. Compl., ¶ 15; Deposition of Telise Turner, p. 14).

RESPONSE: Agreed.

18. Plaintiff Wygant does not reside in Davidson County or any other non-consecutively numbered county. (Third Amend. Compl., ¶ 16; Deposition of Gary Wygant, p. 5).

RESPONSE: Agree.

19. Plaintiffs Wygant and Turner were not aware of the numbers of their own Senate districts at the time of their depositions. (Wygant Depo., p. 9; Turner Depo., p. 14).

RESPONSE: Agreed.

20. Plaintiff Hunt resides within Davidson County and the non-consecutively numbered Senate District 17 (Deposition of Francie Hunt, p. 45; Third Amend. Compl., ¶ 17).

RESPONSE: Agreed.

21. Plaintiff Hunt “felt compelled” to bring this lawsuit to “uphold the letter of the Constitution,” but she was unable to identify any concrete harm that she has personally suffered because of such numbering. (Hunt Depo., p. 50-54).

RESPONSE: Denied. Ms. Hunt testified she “felt compelled to bring this lawsuit because of the nonconsecutive numbering of the senatorial districts in Davidson County” (Deposition of Francie Hunt at 60:17-21. *See Exhibit A* to Plaintiffs’ Appendix.). She has identified the harms she has suffered because of such numbering, including “liv[ing] and vot[ing] in a Senate District created in violation of the Tennessee Constitution” (Plaintiff Hunt’s Response to Interrogatory Number 4, Ex. 4 to Deposition of Francie Hunt. *See Exhibit A* to Plaintiffs’ Appendix.) and denial of the benefits of a staggered-term Senator and senatorial delegation (Hunt Depo. 51:2-13.).

22. Plaintiff Hunt believes that she is “harmed whenever the Constitution is not adhered to the way it’s intended,” and that “if that’s how [the Constitution] is written, that’s how it ought to be applied. (Hunt Depo., p. 54).

RESPONSE: Denied. Defendants misleadingly reverse the order of these two quotes and substitute “the Constitution” for “it,” when in Ms. Hunt’s full quotation the “it” refers to the Constitution’s consecutive numbering provision. Ms. Hunt made the first statement in connection with her exposition of the fact that the consecutive numbering portion of the Tennessee Constitution should be applied. Ms. Hunt’s full quote reads as follows: “I’m not an attorney, but like it looks pretty easy to understand what consecutively means. So, if that’s how it’s written, that’s how it ought to be applied. So that’s one piece. And I am harmed whenever the Constitution

is not adhered to the way it's intended.” (Deposition of Francie Hunt at 50:14-20. *See Exhibit A* to Plaintiffs’ Appendix.)

23. Plaintiff Hunt resided in Davidson County on Eastland Avenue during the 2000s. (Hunt Depo., p. 66).

RESPONSE: Agreed.

24. From 2000-2010, the Senatorial Districts in Davidson County were not consecutively numbered. (SB 197, Pub. Ch. 466 (2002)).

RESPONSE: Agreed.

25. Plaintiff Hunt did not file suit challenging the nonconsecutive numbering of Davidson County from 2000-2010, despite living in Davidson County in that time period. (Hunt Depo., p. 8-10, 22; SB 197, Pub. Ch. 466 (2002)).

RESPONSE: Agreed.

26. Plaintiff Hunt only discovered her alleged “injury” when she was asked to join as a plaintiff in this already-pending litigation. (Hunt Depo., p. 30-34).

RESPONSE: Denied. Plaintiff Hunt alleges she has been injured by the General Assembly’s decision not to number Davidson County’s senatorial districts consecutively. As a resident and voter in the Davidson County portion of the non-consecutively numbered senatorial district, Ms. Hunt is required to vote in a Senate district created in violation of the Tennessee Constitution, unlike other Davidson County and Tennessee voters, and Ms. Hunt is denied staggered-term representation in the Senate, unlike other Tennessee voters from large counties. Ms. Hunt learned of the Enacted House Map’s non-consecutive numbering of Davidson County’s senatorial districts, and thus learned of her injury, “by reading about it in, or hearing about it from, a news source, either after the Legislature enacted the new senate map or after the filing of this

lawsuit.” (Plaintiff Hunt’s Response to Interrogatory Number 6, Ex. 2 to Deposition of Francie Hunt. *See Exhibit A* to Plaintiffs’ Appendix.)

27. Plaintiff Hunt was able to vote in both the August and November 2022 elections, and, to the best of her knowledge, her vote counted. (Hunt Depo., p. 52-53).

RESPONSE: Agreed.

28. Ms. Hunt does allege that any harm results to her from the particular composition of Senate District 17, and she does not claim that her vote carries less weight under the enacted Senate plan. (Hunt Depo., p. 53-54, 58-59, 44).

RESPONSE: Plaintiffs assume fact 28 was intended to state, “Ms. Hunt does not allege . . .” Assuming so, denied. Ms. Hunt claims the composition of Senate District 17 harms her because it was composed by the General Assembly with non-consecutive numbering, in violation of the Tennessee Constitution. The deposition excerpts cited in support of this purported fact neither address the “particular composition” of Senate District 17 nor address whether Ms. Hunt’s vote carried less weight under the Enacted Senate Map. To the contrary, Ms. Hunt has identified the harms she has suffered because of such numbering, including “liv[ing] and vot[ing] in a Senate District created in violation of the Tennessee Constitution” (Plaintiff Hunt’s Response to Interrogatory Number 4, Ex. 4 to Deposition of Francie Hunt. *See Exhibit A* to Plaintiffs’ Appendix.) and denial of the benefits of a staggered-term Senator and senatorial delegation (Hunt Depo. 51:2-13.).

29. House Committee Counsel Doug Himes attempted to comply with the guidelines in Tenn. Code Ann. § 3-1-103(b) “to the fullest extent possible” during the redistricting process. (TRO Resp., Ex. 1, Himes Aff., p. 5).

RESPONSE: Denied. Mr. Himes’ deposition transcript speaks for itself, but Defendants’

shielded all draft redistricting maps and communications between Mr. Himes and members of the General Assembly from production. Thus, Plaintiffs agree Mr. Himes testified that he attempted to comply with the cited statute, but Plaintiffs lack sufficient evidence to agree he actually attempted to comply with the cited statute “to the fullest extent possible.”

30. House Committee Counsel Doug Himes discussed the guidelines of Tenn. Code Ann. § 3-1-103(b) with the Committee. (TRO Resp. Ex. 1, Himes Aff., p. 7).

RESPONSE: Agreed.

31. In creating the ultimately enacted House map, House Committee counsel Himes created “whole districts in each county with a population sufficient to support at least one whole district within the county, single county districts in those counties which constitute a single district, and multi-district counties in those counties which divide evenly into multiple districts within judicially recognized deviation limitations.” (TRO Resp., Ex. 1, Himes Aff., p. 14-15).

RESPONSE: Agreed that Mr. Himes claims to have done so in the cited affidavit, which is accurately cited. Agreed for the purposes of summary judgment only.

32. If a county was not required to be split due to population variance, House Committee counsel Himes did not split that county. (TRO Resp., Ex. 1, Himes Aff., p. 14-15).

RESPONSE: Denied. Mr. Himes testified that seven of the 30 counties split by the Enacted House Map were split only for core retention or for core retention and incumbency protection. (*See* Himes Expert Report, Footnote 12, attached as Exhibit 3 to Mr. Himes’ expert witness deposition, dated December 16, 2022, which is attached as **Exhibit E** to Plaintiffs’ Appendix.) Mr. Himes also agrees Dr. Cervas’s illustrative Map 13c is constitutionally compliant and divides six fewer counties than the Enacted House Map. (Deposition of Doug Himes, dated December 16, 2022, at 38-40. *See* **Exhibit E** to Plaintiffs’ Appendix.) Thus, the Enacted House

Map splits at least seven counties that were not required to be split by population variance.

33. Dr. Jonathan Cervas opined that the General Assembly “has not given a good faith effort to balance the constitutional criteria in state and federal law.” (Deposition of Jonathan Cervas, Ex. 4, p. 19).

RESPONSE: Agreed.

34. At the time of his expert deposition, Dr. Cervas expressly disavowed making any opinion that the General Assembly acted in bad faith. (Cervas Depo, p. 137-138).

RESPONSE: Agreed. Dr. Cervas does not opine on whether the General Assembly acted in bad faith. Yet, were Plaintiffs required to prove bad faith or improper motive, Plaintiffs allege Dr. Cervas’s maps provide evidence of the General Assembly’s bad faith.

35. At the time of his expert deposition, Dr. Cervas did not “know anything about the Legislature or members of the Legislature or what their actions were.” (Cervas Depo., p. 138).

RESPONSE: Agreed.

36. Dr. Cervas’ expert opinion was that the General Assembly did not make a good faith attempt to reduce the number of county splits was based solely on his belief that “it was relatively easy to draw maps that actually reduced the number of county splits while still holding other criteria at similar levels.” (Cervas Depo., p. 138).

RESPONSE: Denied. Dr. Cervas also testified the General Assembly’s decision not to split Shelby County demonstrated lack of good faith. (Deposition of Jonathan Cervas, at pp. 132-33. See **Exhibit G** to Plaintiffs’ Appenix.) In addition, Dr. Cervas further explained his opinion as follows: “whether [the General Assembly] didn’t try, because in the criteria that was listed by the Legislature that said that you could have up to 30 splits, that they tried just to get to that and that’s the result that they got, shows me that there was no effort made to reduce them, that there was no

affirmative – it doesn't mean that they were acting in bad faith. It just means that they weren't acting in good faith to try to reduce those according to the Tennessee Constitution.” (*Id.*, at pp. 137-38.) Dr. Cervas further stated, “All I know is that it was relatively easy to draw maps that actually reduced the number of county splits, while still holding other criteria at similar levels, similar -- the different trade-offs like compactness and deviation, holding those steady, you could still reduce the number of county splits.” (*Id.*, at p. 138.)

37. Dr. Cervas' Plan 13a had the following details:

12 majority-minority districts
Overall Range = 9.96%
High = +5.09% (+3,552)
Low = -4.87% (-3,400)
County Splits: 24
Contiguity: No¹⁴
Unassigned Areas: No

(Expert Deposition of Doug Himes, Ex. 3, p. 19-20, 41; Expert Deposition of Sean Trende, Ex. 1, p. 9-12; Cervas Depo., Ex. 4, p. 13).

RESPONSE: Agreed.

38. Dr. Cervas' Plan 13b had the following details:

12 majority-minority districts
Overall Range = 9.96%
High = +5.09% (+3,552)

¹⁴ One unpopulated census block assigned to District 12 within District 11; one unpopulated census block assigned to District 13 within District 49; one unpopulated census block assigned to District 49 between Districts 13 and 63.

Low = -4.87% (-3,400)

County Splits: 25¹⁵

Contiguity: No¹⁶

Unassigned Areas: No

(Himes Expert Depo., Ex. 3, p. 22-24, 42; Trende Depo., Ex. 1, p. 12-13; Cervas Depo., Ex. 4, p. 14).

RESPONSE: Denied. Cervas House Plan 13b has 13 majority-minority districts. (Cervas Initial Expert Report, at p. 14 (Dr. Cervas’s Initial Expert Report is attached as Exhibit 3 to Mr. Himes’ expert witness deposition, dated December 16, 2022. *See Exhibit E* to Plaintiffs’ Appendix); Himes deposition at 73:21-24 (**Exhibit E** to Plaintiffs’ Appendix); Himes Expert Report (Himes Expert Report, attached as Exhibit 3 to Mr. Himes’ expert witness deposition, dated December 16, 2022. *See Exhibit E* to Plaintiffs’ Appendix).) Other than this inaccuracy, agreed. As noted below, Defendants agree Dr. Cervas corrected the zero-population non-contiguity in his Rebuttal Report.

39. Dr. Cervas’ Plan 14a had the following details:

12 majority-minority districts

Overall Range = 9.98%

High = +5.09% (+3,552)

Low = -4.89% (-3,416)

County Splits: 24¹⁷

¹⁵ Madison County is split but has sufficient population to avoid that outcome.

¹⁶ One unpopulated census block assigned to District 12 within District 11; one unpopulated census block assigned to District 13 within District 49; one unpopulated census block assigned to District 49 between Districts 13 and 63.

¹⁷ Madison County is split but has sufficient population to avoid that outcome.

Contiguity: No¹⁸

Unassigned Areas: No

(Himes Expert Depo., Ex. 3, p. 25-27, 43; Trende Depo., Ex. 1, p. 13-14; Cervas Depo., Ex. 4, p. 15).

RESPONSE: Denied. Cervas House Plan 14a has 15 majority-minority districts. (Cervas Initial Expert Report, at p. 15 (Dr. Cervas’s Initial Expert Report is attached as Exhibit 3 to Mr. Himes’ expert witness deposition, dated December 16, 2022. *See Exhibit E* to Plaintiffs’ Appendix); Himes deposition at 73:21-24 (**Exhibit E** to Plaintiffs’ Appendix); Himes Expert Report (Himes Expert Report, attached as Exhibit 3 to Mr. Himes’ expert witness deposition, dated December 16, 2022. *See Exhibit E* to Plaintiffs’ Appendix).) Other than this inaccuracy, agreed. As noted below, Defendants agree Dr. Cervas corrected the zero-population non-contiguity in his Rebuttal Report.

40. Dr. Cervas’ Plan 13.5a had the following details:

10 majority-minority districts

Overall Range = 9.98%

High = +5.09% (+3,552)

Low = -4.89% (-3,416)

County Splits: 22¹⁹

Contiguity: No²⁰

¹⁸ One unpopulated census block assigned to District 12 within District 11; one unpopulated census block assigned to District 13 within District 49; one unpopulated census block assigned to District 49 between Districts 13 and 63.

¹⁹ Madison County and Shelby County are split but have sufficient population to avoid that outcome.

²⁰ One unpopulated census block assigned to District 12 within District 11; one unpopulated census block assigned to District 13 within District 49; one unpopulated census block assigned to District 49 between Districts 13 and 63; one

Unassigned Areas: No

(Himes Expert Depo, Ex. 3, p. 28-32, 44; Trende Depo., Ex. 1, p. 14-18; Cervas Depo., Ex. 4, p. 16).

RESPONSE: Denied. Cervas House Plan 13.5a has 11 majority-minority districts. (Cervas Initial Expert Report, at p. 16 (Dr. Cervas’s Initial Expert Report is attached as Exhibit 3 to Mr. Himes’ expert witness deposition, dated December 16, 2022. *See Exhibit E* to Plaintiffs’ Appendix); Himes Expert Report (Himes Expert Report, at p. 29, attached as Exhibit 3 to Mr. Himes’ expert witness deposition, dated December 16, 2022. *See Exhibit E* to Plaintiffs’ Appendix).) Other than this inaccuracy, agreed. As noted below, Defendants agree Dr. Cervas corrected the zero-population non-contiguity in his Rebuttal Report.

41. Dr. Cervas’ Plan 13.5b had the following details:

11 majority-minority districts

Overall Range = 9.82%

High = +4.98% (+3,475)

Low = -4.84% (-3,378)

County Splits: 24²¹

Contiguity: No²²

Unassigned Areas: No

unpopulated census block assigned to District 91 within District 86; one unpopulated census block assigned to District 99 between Districts 86, 88 and 95.

²¹ Madison County and Shelby County are split but have sufficient population to avoid that outcome.

²² One unpopulated census block assigned to District 12 within District 11; one unpopulated census block assigned to District 13 within District 49; one unpopulated census block assigned to District 49 between Districts 13 and 63; two unpopulated census blocks assigned to District 68 within District 67; five unpopulated census blocks assigned to District 75 with District 74.

(Himes Expert Depo., Ex. 3, p. 32-37, 45; Trende Depo., Ex. 1, p. 14-18; Cervas Depo., Ex. 4, p. 17).

RESPONSE: Denied. Cervas House Plan 13.5b has 13 majority-minority districts. (Cervas Initial Expert Report, at p. 17 (Dr. Cervas’s Initial Expert Report is attached as Exhibit 3 to Mr. Himes’ expert witness deposition, dated December 16, 2022. *See Exhibit E* to Plaintiffs’ Appendix); Himes deposition at 73:21-24 (**Exhibit E** to Plaintiffs’ Appendix); Himes Expert Report (Himes Expert Report, attached as Exhibit 3 to Mr. Himes’ expert witness deposition, dated December 16, 2022. *See Exhibit E* to Plaintiffs’ Appendix).) Other than this inaccuracy, agreed. As noted below, Defendants agree Dr. Cervas corrected the zero-population non-contiguity in his Rebuttal Report.

42. Dr. Cervas’ Plan 13c had the following details:

13 majority-minority districts

Overall Range = 9.96%

High = +5.09% (+3,552)

Low = -4.87% (-3,398)

County Splits: 24

Contiguity: Yes

Unassigned Areas: No

(Himes Affidavit, Ex. A; Cervas Depo., Ex. 5, p. 3-4).

RESPONSE: Agreed.

43. Dr. Cervas’ Plan 13d had the following details:

13 majority-minority districts

Overall Range = 9.89%

High = +5.09% (+3,552)
Low = -4.80% (-3,350)
County Splits: 24²³
Contiguity: No²⁴
Unassigned Areas: No

(Himes Affidavit, Ex. A; Cervas Depo., Ex. 5, p. 4-5).

RESPONSE: Agreed.

44. Dr. Cervas' Plan 13d_e had the following details:

13 majority-minority districts
Overall Range = 9.89%
High = +5.09% (+3,552)
Low = -4.80% (-3,350)
County Splits: 24
Contiguity: No²⁵
Unassigned Areas: No

(Himes Affidavit, Ex. A; Cervas Supp. Rebuttal Expert Report, p. 1-3).

RESPONSE: Agreed.

²³ Sullivan County is double split.

²⁴ One populated census block assigned to District 78 within District 69; one populated census block assigned to District 78 between Districts 68 and 69.

²⁵ One populated census block assigned to District 78 between Districts 68 and 69; one populated census block assigned to District 1 within District 3; one unpopulated census block assigned to District 1 between Districts 3 and 4.

PLAINTIFFS' ADDITIONAL STATEMENTS OF MATERIAL FACT

69. Plaintiffs' expert witness, Jonathan Cervas, corrected the zero-population non-contiguities addressed by Defendants' expert witnesses in their expert reports by generating revised versions of Cervas House Plans 13b, 14a, 13.5a, and 13.5b in his Rebuttal Report. Dr. Cervas titled these four maps 13b_e, 14a_e, 13.5a_e, and 13.5b_e.

CITATION: Cervas Rebuttal Expert Report, attached as Exhibit 5 to Dr. Cervas's deposition, dated December 13, 2022. *See Exhibit G* to Plaintiffs' Appendix.

Dated: February 10, 2023

Respectfully submitted,

/s/ Scott P Tift

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing *Plaintiffs' Response to Defendants' Statement of Undisputed Material Facts and Plaintiffs' Additional Statement of Material Fact* will be served on the following counsel for the defendants via electronic and U.S. mail on February 10, 2023.

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